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SUPREME COURT RECORD

January 1852 - January 1867

* * * * *

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Roll of Attorneys

E. P. Wells U. S. Dist. Atty
H. Smith
Ebenezer D. Wheaton
M. Ashurst Jr.
P. L. Pitney
Joseph C. Levy
H. C. Thomas
Samuel H. Dickson
Murray F. Tuley
Richd. H. Goodrich
Wm. W. McAdams

January Term 1852 1st Day

Order Book for the Supreme Court of the United for the Territory of New Mexico

Santa Fé January 5th 1852

Pleas began and held in the Court Room in the Palace at the City of Santa Fe on the fifth day of January in the year of Our Lord One thousand eight Hundred and fifty two before the Supreme Court of the United States for the Territory of New Mexico, Present the Honorable Horace Mower and John S Watts Associate Justices of said Court

The Court is now Opened by John S Jones United States Marshall for the Territory of New Mexico. Who is in attendance upon said Court

It is Ordered by the Court that James M Giddings of the City of Santa Fe be the Clerk of this Court, that he reside and keep this office at the City of Santa Fe the Seat of Government for said Territory

Ordered that Court Adjourn until 2 Oclock this afternoon

Court met pursuant to adjournment

Now appears in Open Court James M Giddings and presents to the Court for Approval the following Bond, to wit Know all men by these presents that We James M Giddings and Wm G Ridgely and Preston Beck Jr are held and firmly bound unto

the United States of America in the penal
Sum of Five Thousand dollars to be levied
of Their goods And Chattels, Lands and tene-
ments Signed And Sealed this 5th day of
January 1872

The Condition of the Above Obli
gation is such that Whereas the above Named
James M Giddings has this day been Appointed
Clerk of the Supreme Court of the Territory of
New Mexico, Now if the Said James M Giddings
Shall faithfully discharge the duties of his Office
And Seasonably Record the Decrees Judg-
ments And determinations of the Said Court
of which he is Clerk then this Obligation is
Null and Void, Otherwise to Remain in full
effect, Signed Sealed and Delivered, Wm A Pickett
Preston Beck Jr Seal" "Taken and Approved
by us

John S Watts Judge 2nd District } as Justices U.S
D. Warren Judge 3rd Dist } Supreme Court
For Territory New Mex

Which said bond is Approved by the Court
And thereupon the following Oath of Office
is Administered to the Said James M Gid
dings "to wit" Territory of New Mexico, County
of Santa Fe } Personally Appeared before Open
Court James M Giddings being Appointed
Clerk of the Supreme Court of the United States
for the Territory of New Mexico And subscribed
to the following Oath of James M Giddings
being Appointed Clerk of the Supreme Court
of the United States for the Territory of New
Mexico do Solemnly Swear that I will Properly
And faithfully enter and record all the Orders
decrees Judgements And proceedings of this
Court. And that I will faithfully and impar
tially discharge And perform all the duties
of my said Office According to the best
of my abilities and understandings so help
me God. And thereupon Oath Commissioner in

Open Court 8th January 1852.

Messrs E.P. West & Dillon & H. Wheaton
& H. Smith & Joseph R. Garvey
now appear in Open Court and are
Admitted as Attorneys of this Court. and
duly sworn as such.

No 1 Richard Gray } Error from 1st Judicial District
vs. } Santa Fe County
The United States }

Now Comes the Plaintiff in Error
by Messrs Joseph R. Garvey and H. Dillon his
Attorneys and files the record in the Above entitled Cause, With an Assignment of Errors
thereon.

No 2 The Territory of New Mexico }
by } Petition for Mandamus
Roman Baca }

Now Comes the Territory of New Mexico
by Mr Mitchell her Attorney and files the Petition
in said Cause and the said Roman Baca
now Appears by Messrs Garvey and Smith
his Attorneys and file their motion herein
to dismiss the Writ of Mandamus And the
hearing of the said Motion is Continued
until to Morrow Morning

No 3 The United States }
vs. } Appeal from Probate Court
H. Mc Broderick } Santa Fe County

4

Comes now the Appellant by Messrs Wiseman & Fillebrown his Attorneys and move the Court for the filing of a transcript of said Cause in this Court. And that said Cause be entered On the Docket, which motion is Sustained And said transcript Ordered to be filed And said Cause Ordered to be entered On the docket

Ordered that Court Adjourn until 10 Oclock A M to Morrow

J. M. Fielding Clk

Filed and entered.

J. M. Fielding
Interp. & Writs.

January 6th 1892
2nd day of January Term 1892

The Court met pursuant to Adjournment present As of Yesterday, The minutes of Yesterday were read & approved and Signed

No 1 Richard Gray
vs
The United States } Appeal from 1st Judicial Dist Santa Fe County

Now Comes Mr West Atty for the United States in this Cause and files his Motion to dismiss the Appeal herein for the reasons in said Motion stated, Argument being had and the Court being duly Counsel Advised in the premises Overruled said Motion And the said Mr West

Now Comes the Court in Open Court and said Cause after Argument is submitted to the Court And the Court not being duly advised in the premises takes time to Consider of Judgment herein

No 2. The Territory of New Mexico
vs
Domus Ortiz
} Petition for Mandamus

The motion to dismiss the writ of Mandamus in this Cause is now Argued by the parties and submitted to the Court. And the Court not being duly advised in the premises Take time to Consider of this Judgment in this Cause

No 3. The Territory of New Mexico
vs
Domus Ortiz
} Petition for Mandamus

Now Comes Mr Abbott the Attorney for the Territory in this Cause. And files a Motion herein for a writ of Mandamus in the Alternative against the said Domus Ortiz for a sufficient Answer And the hearing of said Motion is Continued until to morrow Morning

Ordered that Court Adjourn until 2 Oclock this Afternoon,

Court met pursuant to Adjournment

No 4. The Territory of New Mexico
vs
Pruch M Beckwith
} Appeal from Arrest Court

60

No 3 Now Comes the Appellant Jacundo Pino by Mess Wheaton and Pleas his Attorneys And file herein the Affidavit of W Wheaton Suggesting a diminution of the Record in this And moving for a rule Against the Clerk returnable at the Next Term of this Court to send up A more perfect transcript And for the giving Notice Against the Appellee D Hughes N Beckwith With And the hearing of said Motions is Continued until to Morrow Morning

No 3 Jacundo Pino
vs
D M Beckwith } Appeal from Santa Fe County Dist Court

Now Comes Messrs Ashurst And Smith Attorneys for Appellee and file their Motion to dismiss the Appeal herein for the reasons in said Motion stated And the hearing of said Motion is Continued until to Morrow Morning

Ordered that the Court adjourn until to Morrow Morning

J Milledge C.J.

Read and assented to
16 March
Peter L. Watts

Supreme Court Santa Fe
3rd day 1852

The Court met pursuant to adjournment
Present As of Yesterday.
The minutes were read approved and signed

Escambia Circ.

No 3 USA
Hugh M Beckwith } Appeal from Circuit Court
Escambia Co County

Now comes into Court Messrs Hugh M Smith and M Arhuart and enter their appearance in this Case for the Appellee And After Some time Spent in the Argument of the Motions filed herein the further Consideration Are Continued to 2 Oclock this Afternoon

Ordered that Court adjourn until 2 Oclock this Afternoon

2 Oclock PM

This Court Met Pursuant to adjournment

No 3 Escambia Circ.
USA
by
Hugh M Beckwith } Appeal from Circuit Court
Escambia Co

Now Comes Messrs Wheaton and Pillans for the Appellant And Messrs Smith and Arhuart for the Appellee And the Motions now pending in said Cause Are Continued until to Morrow Morning

Ordered that Court Adjourn until 10 Oclock to Morrow Morning

J M Hedderings Clerk

Read and assented to
J C Mercer
Solon M. Watts

Fourth day
January Term A.D. 1852
Second Court

The Court met pursuant to adjournment
Present as of Yesterday
Minutes read Approved and Signed

No 3 Facundo Pino
by
Hugh N Brent } Appeal from the Court
} of Santa Fe County

And Comes now Melvin Wheaton
And Gillem Attorneys for Appellant and
Mesry Smith and Ashurst for the Appellee
And after some time Spent in the Argu
ment of the Motions herein the Court
Ruled that the Appellant
be required to furnish a Complete Trans
Cript of the said Cause at Ten Oclock
to Morrow Morning, And to which
time the further Consideration thereof is
Continued

And now Come into Court Melvin Wheaton
Johnson And Merril Ashurst and duly sworn
As Attorney of this Court

Ordered that Court adjourn until 10 Oclock
to Morrow Morning

John Scurry Clk

Read and approved
Hon Monroe
John L. Watts

Supreme Court

15th day
January Term AD 1852

The Court met pursuant to adjournment

Present As of yesterday.

Minutes Read Approved and Signed

No 3 Facundo Pino
vs
Hugh M Beckwith } Appeal from Circuit Court Santa Fe County

Now Comes the Appellant by his Attorneys Messrs Wheaton and Pelham and files an Assignment of Errors in this Cause, and the said Appellant not being ready to file a Transcript As Ruled Yesterday the further Consideration of the Cause is Continued until 3 Oclock this afternoon

Ordered that the Court Adjourn until 3 Oclock P.M.

3 Oclock P.M.

The Court met pursuant to Adjournment.

No 3 Facundo Pino
vs
Hugh M Beckwith } Appeal from Circuit Court Santa Fe County

Comes now the Appellant by his Attorneys Wheaton and Pelham and files Assignment of Errors. Whereupon

herein and a transcript of this Cause and Comes the Appellee by his Attorney Smith And Arkins. And joines issue upon the assignment of Error And this Cause is now submitted to this Court with leave to the parties to file their Arguments herein and this Cause is Continued under Advisement until the next meeting of the Court On the 3rd Monday of March 1882

201 Richard Bray
Ads
United States } Appeal from 1st Judicial District Court

Now Come the Parties by their Attorney And the Court being sufficiently Advised in the premises pronounces the following Opinion, The Opinion of the Court delivered by Justice Mower.

The facts in this Case are briefly these as presented by the Record Bray was indicted at the last September Term of the District Court of the United States in the County of Dauphin Pa for An Assault with the intent to Kill in One Count and for a Common Assault in Another Count it was Averred that the Offence was Committed in the County of Dauphin Pa in the month of April 1879 without Any Allegation that it was Committed against the Laws of the United States Upon the trial the Jury found Bray guilty of a Common Assault Only Acquitting him upon the first Count and Adjudging a fine against him for the sum of Twenty five dollars The Counsel for Bray moved in Arrest of this judgment Assigning the following Causes

First that the Venue improperly laid

Second that no Laws of

punishing Assault in this Territory of New Mexico at the time the Assault is Alledged in the Indictment to have been Committed

Third the Offence Charged in the Second Count on Which the defendant was Convicted is not an indictable Offence

Fourth and for many Other and Manifest Error Apparent On the Record The Court below refused to Arrest the Judgment but entered a Judgment upon the Verdict and the Counsel for the defendant filed his bills of Exceptions, Alleging this refusal as Error, and the Case Comes into this Court for readjudication.

Before we enter upon the discussion of the Questions presented by the Record, it is proper that we should Consider the Extent of the Legislative Power of the Congress of the United States over the Territories of the United States. This power is Absolute and unlimited, and extends to all the rightful subjects of Legislation and no One will deny that the Definition of Crimes and Misdemeanors and the prescription of the modes of punishment are not Necessarily among the rightful subjects of Legislation

See 9 Org Laws p 24

But the Organic Act of the Territories and for the Territorial purposes, provides that the Jurisdiction of all the Courts Provided for by law both Appellate and Original shall be as limited by law thereby Conferring upon the Legislature the Power of Limiting and defining the Jurisdiction of each Court created by the Organic Law

See 9 Org Laws p 48

So far as it regards the Regulations of the Municipal and Criminal Affairs of the

12

Territory with the exception that no power can be given to Justices of the Peace when the title or boundaries of land are in question or when the debt or funds claimed shall exceed One hundred dollars In the exercise of the powers the Legislature of the Territory at its first session enacted the law under which it is claimed that this offence was committed but expressly provided that it should be punished in a summary manner before a Justice of the Peace And in the same section that all other cases should be indictable This construction is sustained by the Spanish rendering of the law and the report of Gen Kearney to Congress besides upon a reasonable section which is fully supplied And remedies by the Spanish statutes of the 4th This inference is further corroborated by another section under the title of Proceedings in Criminal Cases which also provides by the punishment of this Offence before the Justice in a summary manner Upon a consideration of these different sections collectively there can be no doubt of the intention of the Legislature to give Justices of the Peace all the civil and criminal jurisdiction of this and other minor Offences thus returning to the community an simple and speedy punishment of all offenders in these respects which is the best guarantee against a frequent repetition of the misdemeanors and relieving the higher Courts of a multitude of Cases which would only increase the costs to the public and is a pernicious trammel upon and clogs the wheels of Justice in those Courts

But it is contended that the Organic Law Congress has Conferred new Laws as well as Chancery Jurisdiction on the Supreme and District Courts This is true but in the same section

Kearny Code Dec 8/11 Act 3 Crims & Punishments p 374/375

4 Doc 1st 60 Congl R. 1848 1st sess

Kearny Code Dec 8/11

Section Organic Law

It is provided that this Jurisdiction is to be limited by law The evident intention of this Section is to Confer these Courts with Equity And Law Powers for the purpose of Discharging with fullest effect the duties Assigned to them by Congressional And Territorial Legislation

It Cannot be Argued that by Virtue of this Section these Courts have Cognizance of Offences At Common Law without Legislative Sanction for it is expressly decided in the Case of the United States V Hudson 7 Cranch Rep 32 that the Courts of the United States have not Jurisdiction derived from the Common Laws to define And punish Criminal Offences And in the Case of Wheaton et al V Peters et al 8 Peters Rep. 591 it is held that there Can be no Common Law Crimes kept by Legislative Adoptions The same point is also affirmed in the Case of Kendall V the United States where as an Appeal from the decision of this high Tribunal by the District And Supreme Courts depends upon Returning an Indictment in Criminal Cases where Shall we find the Statute by Virtue of which the District Court can take Cognizance of a Common Assault and battery It is not written in the Criminal Code of the United States nor in the Organic Law While the Law of the Territory which defines the Crime And its punishment in positive terms Confers Exclusive Jurisdiction upon Justices of the Peace But it is said that when the Crime is Created by Law then the Common Law Jurisdiction of the District Courts arises We think not. for the District Court Could Counteract the Provisions of the Legislature in prescribing the mode of trial And the Tribunal, It might dispense altogether And substitute the Common Law Penalties which have long since been Abolished in Maryland because of the Civil and inhuman Character This practical Absurdity will be Obvi

by no One Yet if the rules laid down by the Legislative for the punishment of Offences Against Territorial Laws Can be disregarded and One respected by Virtue of the Common Law Jurisdiction the same Force of Reasoning would Warrant the above incongruous Conclusions

The decision of the Court is therefore that in this Case the Judgment of the United Court of the United States for the County of Santa Fe be reversed and the Case be remanded to said District Court with instructions to dismiss the same for the Want of Jurisdiction and to discharge the respondent and that the plaintiff in Error recover his Costs to be taxed. Let it be Certified Accordingly

It is therefore Considered by the Court that the Appellant recover of this Appellee his Costs and Charges in this behalf herein Out and expended taxed at Dollars and Cents

No 2 The Territory of New Mexico
by
Soman Ortiz
Petition for Mandamus

Now Comes the parties by their Attorney and the Court being duly Sufficiently advised in the premises pronounces the following Opinion and Judgment in this Case. The Opinion of the Court delivered by Justice Watts.

The question which is presented by the papers in this Case is One which must determine an important branch of the Jurisdiction of the Supreme Court of this Territory. The last Act of which it Appears and as follows, As the Legislative Assembly

many eighteen hundred and fifty two
the following petition was presented to one
of the Associate Justices of this Court
Territory of New Mexico }
County of Santa Fe } ss

To the Honorable Grafton Baker
Chief Justice of the Territory of New Mexico and
Judge of the 1st Judicial District in said
Territory

The Territory of New Mexico by
& & West her Attorney, would most respect
fully represent to your Honor that James
Webb and William Mepherey Merchants
and Partners trading and doing busines
under the name & Style and firm of
Mepherey and Webb have been and still
are dealing and Vending goods as Merchants
in the County of Santa Fe in said Territory
without a license so to deal and Vend goods
as Merchant aforesaid as required by law
And although they have been Called on
by R M Stephens the Sheriff in and for said County
to take out such license they have hitherto
wholly neglected and refused and still do
neglect and refuse to take out such license
to deal and Vend goods as Merchants aforesaid
The Territory aforesaid by her Attorney
aforesaid would further represent to your
Honor that on the second day of October
one thousand eight hundred and fifty two
Notes Donaciano Vigil Probate Judge in and for
the County of Santa Fe in said Territory
issued his Warrant upon the Complaint
of the Sheriff of said County directed
by law under his hand for the arrest of
the said James Webb and William B
Mepherey in words and figures as follows
to wit

"Territory of New Mexico
County of Santa Fe }

Territory of New Mexico to the

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Sheriff of the County of Santa Fe
Greeting

Whereas Complaint has this day been made to the Sheriff of said County to me Tomas Ortiz Prefect and Probate Judge of said County that Wm S Mepherson and James D Webb trading and doing business under the form and style of Mepherson and Webb did at the County of Santa Fe aforesaid from the 25th day of June A D 1861 to the 2nd day of October A D 1861 deal as merchants without a license first obtained according to law

You are therefore hereby Commanded to Arrest the said Wm S Mepherson and the said James D Webb and forthwith bring them or either one of them before me Tomas Ortiz Prefect and Probate Judge of the said County at the Court House of said County to Answer the Complaint of the Territory of New Mexico upon a charge of having dealt as merchants without a license first obtained according to law In testimony whereof I Tomas Ortiz Prefect and Probate Judge aforesaid hereunto Set my hand and Affixed my Seal this 2nd day of October A D 1861

Tomas Ortiz Prefecto

Territory of New Mexico
County of Santa Fe

In witness whereof I Juan Valencia Sheriff aforesaid have hereunto Set my hand and Affixed my private Seal there being no Seal of Office provided the day and year above written

Juan Valencia Sh'ff
Per Andres Cunt

Upon which said Warrant the said

James McCabe was Arrested and produced
into Court by the Sheriff of said County and
upon which said Warrant is the Return
of the Sheriff of the said County in the Letter
And figures following to wit "Executed the
within by Arresting and bringing into
Court the body of James D Webb within
Mentioned Oct 2nd 1851
R M Stephens Sheriff
That on the Arrest of the said
James D Webb as aforesaid by the Sheriff
aforesaid the said Probate Judge Convened
his Court for the purpose of taking Cognizance
of said Complaint against the said
James Meservey And the said James
D Webb And did take Cognizance of the
Same And After Several days Spent
in determining the preliminary Question
in said Cause by said Court And after
which said preliminary Question as
aforesaid was determined and disposed
of And said Cause ready for trial the
said Court On the third day of October
One thousand eight hundred and
fifty One Adjourned for fifty days
by the Expiration of which said fifty
days have been set for the trial of said
Cause at which time said Court being in
like manner said and presided to
attend for the trial of said Cause
to the great Damage and deception of
the said Territory demanding the said
Territory Cause of their just prosecution and
to the Order and violation of the Laws
of the said Territory And to the delay
and hindrance of Justice
Your petitioner the said
Territory by the said Attorney would
therefore pray your Honor to grant a
writ of Mandamus to Compel
the said Judge and Probate Judge

As Ex parte to proceed immediately
to judgment, in said Cause against
the said William J. Mesperry And the
said Samuel S. Webb Ex aforesaid And
to do right and justice in the premises
And in the execution of the laws
of the said Territory Etc. Wherefore
the Territory of New Mexico
J. R. M. Stephens Sheriff in and for the
County of Santa Fe in the Territory of
New Mexico do solemnly swear that the
matters and things set forth in the
foregoing petition are true to the best
of my knowledge and belief and
that he knows the contents thereof
R M Stephens
Sworn to and subscribed before me this
30th day of December A.D. 1857
J. Proven Associate Justice
U.S. Supreme Court
upon which said petition the following
order was made
The President of the United
States of America
To Tomas. Ortiz Judge of
the Court of Probate and Justice
County of Santa Fe Territory of New
Mexico Greeting
Whereas We have been informed
that there are certain matters depending
in your Court wherein the Territory
of New Mexico is plaintiff and William
J. Mesperry And Samuel S. Webb are
defendants And whereas We have
been informed that you have failed
to set the judgment upon said Cause
Therefore We Do recommend you that
you be and appear before Our Supreme
Court for the Territory of New
Mexico at Santa Fe in said Territo-
tory On the second, this fifth day of January

One Thousand eight hundred and Fifty two, to Shew Cause if any you have why you have not proceeded to the trial and judgment in said Cause and why a Procedendo should not issue Accordingly And also to Abide the further Order of Our Supreme Court in the premises Hereof fail not at your Peril Witness the Hon Horace Mower Associate Justice of the Supreme Court of the Territory of New Mexico and the Seal of said Court this 2nd day of January 1852

H Mower Asso Justice Sup Court N.M. for the Territory of N Mex

On the back of this process is the following indorsement

I certify that I executed the within notice by delivering to Thomas Ortiz a true copy of the same 2nd Jany 1852

Jorge Jones Marshal
by R.M. Stephens D.M.

On the 5th day of January A.D. 1852 being the first day of the present Term of the Supreme Court the said Thomas Ortiz appeared in Court and by his Attorney filed the following Procedendo

Procedendo

Territory of New Mexico } ss. Supreme Court January Term 1852

The said Thomas Ortiz by his Attorney H.M. Smith and Joseph G Garney Esqrs, and moves the Court to dismiss the writ of Mandamus issued in this Cause.

And the said Court upon the Petition for the Mandamus filed by the Petitioner Authorized by law to practice in the Territory in Court before a Judge at Chambers

And it appearing that the Mandamus cannot be issued in vacation but only in Term time

Writ of Mandamus to the Probate Court of the County of Santa Fe Can only be issued from the District Court of the United States for the first Judicial District of said Territory

4 The petition does not show a case of extraordinary remedy of a Mandamus

3 The writ is not such an one as the petition prays for nor can such a writ as the petition prays for be issued

6 & 7 West, by whom said petition is made as Attorney for the Territory of New Mexico is not and by law is prohibited from being Attorney for said Territory has not and by law cannot have any Authority to appear in Court or before any Judicial tribunal for said Territory and for other Causes

Smith and Geary Atty for Orth

The question presented to the Court by the papers in this Case is this Has Authority been conferred upon the Supreme Court of the Territory of New Mexico to issue the writ of mandamus to the Probate Court of the Territory

The Supreme Court of the Territory of New Mexico derives its existence to the Organic Law of Congress Approved September 9th 1850 providing for the erection of a Territorial Government for the Territory of New Mexico And it is to this Organic Law Our Attention should first be directed to Ascertain the intent of its Jurisdiction The 10th Section of the Organic Law of the Territory says "that the Judicial power of said Territory shall be vested in a Supreme Court District Courts Probate Courts and

of the Places. the Jurisdiction of the Several Courts herein provided for both Appellate and Original And that of the Probate Courts and Justices of the Peace shall be & limited by laws And the said Supreme And District Courts respectively shall possess Chancery & Common Law Jurisdiction And the said Supreme And District Courts of the said Territory And the respective Judges thereof shall And may grant Writs of Habeas Corpus in all Cases in which the same are granted by the Judges of the United States in the District of Columbia It is further provided in the 10 Section of the Organic Law that Writs of Error bills of Exceptions And Appeals shall be Allowed in all Cases from the final decisions of said District Courts to the Supreme Court under such regulations as may be prescribed by Law but in no Case removed to the Supreme Court shall trial by Jury be Allowed in said Courts It will be Seen from the Above quotations from the Organic Law that by that Law Appellate Jurisdiction has been given to the Supreme Court from the final decisions of the District Courts only. And Original Jurisdiction has been given to the Supreme Court in the Single instance of granting Writs of Habeas Corpus It now remains to be considered whether any Acts of the Legislative Assembly which have been passed since the Organization of the Territorial Government of New Mexico Confer Any Additional Original Jurisdiction upon the Supreme Court By An act of the Legislative Assembly of this Territory Approved Feb 25th 1887 it is provided that the Laws of Nebraska in force in this Territory shall not be repugnant to Or inconsistent with the Constitution of the United States the Organic Act of this Territory Civil

Act passed at the present Session of the Legislative Assembly shall be and are continued in force, excepting in "Kearneys Code" the law concerning the register of Land & by this Section the Articles of Kearneys Code, upon the Subject of Courts and Judicial Powers is repealed & a matter in regard to which no Provision is supplied, no Other than Appellate power is there given to the Superior Court, by reference to an Act regulating the Practice in the District and Supreme Courts of the Territory of New Mexico Approved July 12 1851 Section 41 of which provides that the District Courts of said Territory shall have Original Jurisdiction in all Cases and and Criminal in which the Jurisdiction is not Specially delegated to some other Court and such Appellate and Supervisory Jurisdiction as may be Granted them by Law, By all of the Laws now in force in this Territory it cannot be perceived that any Other or further Original Jurisdiction has been given to the Supreme Court of this Territory that such as may Conferred upon it by the Organic Law, and it is Contended that by the Organic Law published 22nd September 1846 by Brigadier General S. W. Kearney this power of giving the first named for in this Act & the 3rd Section of Article 4 upon the Subject of Judicial Powers says The Superior Court shall have a General Superintending Control Over all inferior Courts and Tribunals of Justice And shall have power to issue Original writs to Compel Inferior Courts and Officers to perform their duties According to Law whenever they may fail or refuse

so to do, This Section would undoubtedly
Authorize the issuing Writ of Mandamus if
it is now in force, and applicable to this Case
The Erection of Civil Government imports an Ex
of Sovereignty The Changes of the base of Civil
Government made by the proper Authority
And Acquiesced in by the people must be
regarded as Valid And the true source
from which power must be derived
And beyond which it Cannot be extended
The Promulgation by Congress of An Organic Law
for this Territory of Necessity repeals, And abrogates
Any, & existing Organic Law whether
emanating from the same, or some other
source The fact that the Legislative Assem
bly Continued in force the Kearny Code
does not affect the matter for if the Legislative
Assembly had power to adopt the Organic
Law in the Kearny Code And force & obedience
to it requirements it would be a virtual
Assumption of Sovereignty And Operate as a repeal
of the form of Government furnished by Con
gress for this Territory In the Case of the Clamdist
Orleans Vs Phebus 11 Index 175 it was held
by the Supreme Court of the United States
that Local Laws Cannot Confer Jurisdiction
on the Courts of the United States They can
Only furnish rules to ascertain the rights of
parties And thus A duty in the Administra
tion of the proper Remedies where the Juris
diction is Vested by the Laws of the United
States The Organic Law of this Territory
passed by Congress Vests in the Supreme Court
of this Territory Only Appellate Jurisdiction
but it does not Give it Original Jurisdiction
in Any Case but that of Granting writs of
Habeas Corpus It has often repeated
decided in Courts of the highest Authority
that An Affirmative Grant of Original
Jurisdiction implies a negative upon
Exercise in Any Other Case By the Constitu

=law of the United States to Original
Jurisdiction of the Supreme Court of the
United States &c "Limited to Cases affec-
ting Embassadors and Other Public
Ministers And Consuls, and those in which
a State may be a party under this Affir-
mative grant of Original Jurisdiction
the Supreme Court of the United States
decided that Congress had no power to
extend it. See Marbury v Madison 1 C
Cranch 137 Cohen v the State of Virginia
6 Wheaton 264 Osborn et al v the Bank
of the United States 9 Wheaton 738 Adhere
ing to the principles thus laid down
in these Adjudications of the Supreme
Court of the United States the Conclusion
is manifest that the Legislative Assembly
Cannot by its Law extend the Jurisdic-
tion of Original Jurisdiction
to the Supreme Court of this Territory
beyond the limits of the Organic Law
of Congress Approved 9th September 1850 Since
the 3rd Section of Article 4 of the Organic
Law of 22nd of September 1846 published in
the Statutes is not Considered in force
And Cannot Extend the Original Juris-
diction of the Court beyond the limits of
the Organic Law, Congress by the Law
now under Consideration was a Law
in which the Issuing the Writ of Man-
damus was necessary to the Exercise of the
Appellate Jurisdiction of this Court the
Decision of the Court would be merely
Abstract The Laws in force under which
this Cause Originated in the Probate Court
will be found in Section 33rd and 55th of
the Articles in Statutes Code upon the
Subject of Revenue The 33rd Section says
Appeals may be taken from the Judg-
ments of the Prefect to the Circuit Court
but no such Appeal shall be allowed

under it be taken On the day of trial
It will thus appear that the Statute and the
the Supreme Court of this Territory is by law
the Appropriate tribunal of Appellate Jurisdiction from the Judgment of the Probate Court
In the Case of Ex parte Dexter Hoyt & Co. of the port
of New York 13 Peters S Court reports Page 279
The Supreme Court of the United States
refused to issue
a mandamus to the District Court
upon the ground that the Appellate Jurisdiction in the Case of any writ was direct and immediate to the Circuit Court of the Southern
District of New York & this View of the
Case is not tenable Grounded in fact
the power of issuing this writ of Mandamus to the Probate Judge of Alameda
County does exist in this Court the question
yet remains to be Considered does the petitioner
make out in his petition such a Case
as calls for the Exercise of this Power The
facts in the petition stated upon which
the motion is predicated are these 1st An
adjournment of the Case for fifty days
after said Cause was ready for trial
2nd A failure and neglect to Attend for the
trial of said Cause although Several
other days since the Expiration of said
fifty days have been set for the trial of
said Cause at which the said Court
had an Opportunity failed and neglected
to Attend for the trial of said Cause
On the Absence of any law limiting the time
for which a Cause may be Continued or
Specifying the reasons for Causes which shall
entitle a party to a Continuance it must
be regarded as left to the Sound discretion
of the Inferior Court for what and how
long to Continue a Cause For Aught
therefore which appears by this petition the Continuance may have been Granted until the

Contrary Appeared this Court must
presume Who have been right and
proper The Petition does not State that
either party Objected to the Continuance and
in the absence of such an Averment this
Court must Conclude that said Continuance
of sixty days was with the Consent of both
Parties The Case of Ex parte Marbles Brad
Dixet & Peters 658 is in point upon question
of discretion in Inferior Courts In that
Case a mandamus had been sued
against the Judge of the Northern District
of New York directing him to reinstate
certain suits which had been dismissed
from the docket of this Court And to proceed
to adjudicate them According to Law A
motion was made for an Attachment
against the Judge of the Northern District
of New York for Contempt upon the
ground of great delay which had
taken place in the Proceedings which
was disposed to Amount to a Contempt
of the Court and a motion was also
made for a rule to Show Cause why
a Mandamus Should not issue to the
District Judge Which motion was
Overruled And the Supreme Court
held that a Judge must exercise
his discretion in those intermediate
proceedings which take place between
the institution and trial of a Suit
The Consul of the French Republic
under the provisions of a Convention between
that Republic and the United States
Applied to One of the United States District
Judges for a warrant to Apprehend Capt
Jarvis who was Alleged to be Absconded
from the French Fleet The District Judge
refused to issue the Warrant Upon
which was made to the Supreme
Court for a Mandamus Compelling

the District Judge to issue the Warrant
And the Supreme Court refused to issue
the mandamus upon the ground that the
District Judge had Acted Judicially in
the Case And that the Supreme Court had
"no power to Compel a Judge to decide Accordg
to the Actate of any Judgement but his Own"
See the United States vs Judge Lawrence 8 Wales
Page 42 So far as the 2nd Reason is Concerned
the Petition does not disclose that any damage
or inconvenience resulted from the failure
of the Probate Judge to Attend upon the Other
Occasions set for trial, for the petition does
not inform us that either party Attended
On those days Or were ready for trial
And if the Parties did not attend or if
Attending were not ready to proceed with
the Cause no damage or inconvenience
Could result from the Absence of the
Probate Judge or his failure to Attend
The Speedy progress of any Cause (not unfre
quently depends as much upon the action
of the Parties, as of the Court The failure to
Attend in this Case is not Charged to have
been a wilful failure, The Probate Judge
may have been Sick And unable to
Attend or may have Some Other Suffi
Cient reason for his Absence And Chan
requires us to presume he had a valid
reason for his Absence unless it is stated
to have been wilful or shown to be
Without Cause, The Petition in this Cau
prays for the issuing a writ of mandamus to
Compel the said Domas Orth Probate Judge Af
aforesaid to proceed immediately to Judgment
in said Cause against the said Williams
McElroy And the said Dames Webb And
to do Prompt Justice in the premises And in
the Execution of the laws of said Territory
This Language is unacceptable) of a double
Construction It may be Construed a

meaning Simply that the Probate Judge
proceed to Judgement in the Case referred
to & it may mean that the Probate Judge
be directed to render Judgment against the
defendant in the Case It is in the power
of a pleader by the use of proper language
to strip his pleading of Ambiguity and
place the Construction intended beyond
Cavil If the pleader Omits to do so his
language must be Construed most favor
able to the party against whom the plead
ing is exhibited and most unfavorably to
the pleader under this Rule of Con
struction this Court would have no
power to grant such a mandamus
as is prayed for in this petition In
the Case of the Life and Fire Insurance
Company of New York V Adams 9
Peters 573 the Petitioners in that Case
required of the Supreme Court a
Mandamus Ordering the Judge to
render a Specified Judgment and thus
favor the petitioner In that Case like
the petition now under Consideration
did not Show that the Case was in
a Condition for final Judgment
nor that the Judge was unwilling to
render One In the same Case the Su
preme Court held that they would
not Order an inferior tribunal to
render Judgment for or against
either party but that in a proper
Case it would Order such Court
to proceed to Judgment As further
held by the Supreme Court of the
United States in the same Case that
should it be possible that in a Case
ripe for Judgment, the Court before
whom it was depending Could
persevering refuse to terminate
the Cause The Supreme Court

without undecating the Character of the
Judgment would be required by the duty
to Order the Inferior Court to Render Some
Judgment in the Case but to Justify
this Mandate a plain Case of refusing
to Proceed in the Inferior Court Ought
to be made Out In Such Case the Su
preme Court of the Territory would not
Hesitate to issue a mandamus if
Necessary in the Exercise of it Appellate
Jurisdiction The writ sued in this
Case is not a mandamus but a
Mere Rule requiring Cause to be shown
why a mandamus Shall not issue
In Cases of Doubt or Deficulty Such would
usually Precede the motion for a Man
damus And is unexceptionable in the
present instance On Account of its
Ignorance in Vacation If in answer
to the rule the party Complained of
Shows no Sufficient Cause why a Man
damus Should not issue then On motion
the Court will direct an Alternative or
Peremtory mandamus Against the
Party Complained of The Jurisdiction
And the Power of the District Judges of
the First Judicial District in this Case
is a point upon which we intimate
no Opinion Each District Court must
Settle for itself its Jurisdiction And Power
Subject to the review of this Court as a
Supreme Appellate tribunal The Ex
pression of an Opinion on the Other points
made in this Cause Are unnecessary In
the very beginning of the opinion of this
Court it has been thought proper to
define At length the Relations now
which it Stands in regard to this
important branch of Judicial
Power

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Per Curiam
It is Ordered by the Court that the rule in this Case be discharged

It is further Ordered by the Court that the petition herein filed be dispensed

It is therefore Considered by the Court that the said rule be discharged and the said petition dispensed And that the defendant recover of the Territory of New Mexico his Costs and Charges in this behalf laid out and Expended taxed at ten —— Dollars and fifty Cents

Ordered that Court Adjourn until the third Monday in March 1852

Read and approved

John S. Watts
Judge

3rd Monday, March 15th 1852

The Court met pursuant to Adjournment

Present
Hon Horace Mower and John S. Watts
Judges and
Miguel Luna Clerk

The Court is Opened by John Jones Crier

No 3

Jacundo Pino
vs
D. W. Beckwith } Appeal from Arcuit Court
Santa Fe County
And now comes the defendant by his Attorney Smith Arbuckle and files his brief herein And the said plaintiff not appearing the Case is submitted to the Court and the Court not being advised in the premises, the Case is Continued until Adviserment until 2 O'clock P.M. on the afternoon of Saturday the 20th inst.

Ordered that Court adjourn until 2 O'clock P.M. Saturday the 20th inst

Ino Giddings Clk

Read and approved
H. C. Merrill
John S. Watts

Saturday 2 O'clock P.M. March 20th 1882

The Court met pursuant to adjournment. Present Hon. Horace Merrill and John S. Watts Associate Justices
Ino Giddings Clerk
The Court is Opened by John Jones Marshal

No 3 Jacundo Pino
vs
D. W. Beckwith } Appeal from Santa Fe County Arcuit Court
And now comes the defendant by his Attorney Smith and Arbuckle and the plaintiff not Appearing and the Court being duly & fully Advised in the premises Produced the following Opinion. The Opinion of the Court

delivered by Justice Walls

Previous to the establishment of a Civil
Government in this Territory by the passage
of the Organic Law of Congress Approved
September the 9th 1850 the Judicial Powers
said Territory was Vested in Alcalde, Prefects
Circuit Courts And a Supreme Court
The Judges of the Supreme Court were
the Judges of Circuit Courts And the
Territory was divided into three Circuits
Called Central, Northern And South
Eastern Districts, upon the erection of
a Territorial Government here under
the Organic Law of Congress above mentioned these Courts passed Away and the
Legislative Assembly at its June Session
1851, in Accordance with the requirements of the Organic Law, Vested the
Judicial Powers of said Territory in a
Supreme Court. District Courts Probate
Courts And Justices of the Peace with
the said June Session 1851 of the Legislative Assembly An Act was passed
Perpetuating And declaring in force
Certain Acts Orders And Laws And for
other purposes, the second Section of
which Act provides, that all bonds
writs And processes that have remained
in force shall be Carried to a final
decision in the Courts established by
the Legislative Assembly to the same
effect As they would have been in the
Courts previously existing The Case now
before us was tried in the Circuit Court for
the Central District At Lewis & Clark And an
Appeal was taken from the Judgment
of the Circuit Court to the Supreme Court
And by Virtue of the Section Above
Quoted Comes before the Supreme
Court Created under the Organic

Case for Adjudication The suit in this
Case was a petition in debt, the writ was
issued 25th of May 1850 served on the defendant
On the 4th of June 1850 And the petition is
in these words
In the Santa Fé Circuit Court
June Term 1850
The petition of Hugh M Beckwith respectfully
States that sometime in January 1847
he through his Agent Lane McRaskon
Contracted with Ordeacundo Pino who
alledged himself to be the Agent with
sufficient powers of Attorney of Maria de
la Luz Raskon, which latter Agent & Herself
to be Your devisee And legal representatives
of Duncan Rafael Raskon deceased under
his last will and testament for the pur
Chase of a certain House and lot of ground
situated in the City of Santa Fé County
of Santa Fé N. Mo lying on Main Street
And bounded South by the Rio Chiquito
West by the land of Doña Vigil and East
by an Alley for and in Consideration of the
Sum of three thousand dollars of which
Two Thousand were to be paid Cash in
hand And drew Accordingly paid And
the balance to be paid in two equal in
stalments, payable in three And six
months thereafter Your petitioner further
States that after the first pay
mentalment became due and payable
he was ready and offered to pay the
Same to the said Ordeacundo Pino and
made demand thereof And
Also the Amount of the last instalment
And made demand of a deed sufficient
in Law to make him a good and legal
title to the premises aforesaid Your
petitioner further stated that the said
Ordeacundo Pino has hitherto failed to make
him any such deed And as your petitioner

believed And is Advised that he has no sufficient legal Authority or Any legal Power from the said Rascon Or Any Other Person in whom the true title to said Premises to make A legal Conveyance to your Petitioner Your Petitioner prays the Court for a Judgment Against the said Secundo Pino for the said Sum of two thousand dollars with legal interest thereon from the time of payment of the same together with his Damages And Cost and to Award him An Execution therefor

Angny & Ashurst for Plff

This Petition was Sworn to in the usual form before the Clerk At the June Term 1880 of the Circuit Court the defendant appeared and filed his Answer to the above Petition, Subsequently during the Same Term On the 8th day of August 1880 A motion was made by the Defendant for leave to file An Amended Answer the motion was sustained by the Court And On the 8th day of August 1880 the following Amended Answer was filed by the Defendant

A M Beckwith

vs

Secundo Pino

The Answer of said Pino Agent &c Maria de la Luz Rascon States As follows 1st Protesting Against the manifold errors imperfections And incongruities Contained in said petition by which the same is rendered Absolutely Null And Void And illegal Respondent As Agent As aforesaid for Answer to the Same Answering Says that the Matters And things Contained in said petition are untrue as Alleged And Says the Facts are as Stated And Set forth And further that he as Agent As aforesaid did Some

time in January A.D 1850 Contract with
the said Don. Mg Rascon not as the Agent
of his Son in law the plaintiff, but in his own
proper person and in his own name and
right for the sale of the House and property
within said petition mentioned and described
That before the making and signing said
Contract he the said Respondent showed
and explained fully to said Don. Mg Rascon
his power as Agent of said Maria de la Luz
Cebra the evidences the proposed shewing
the right of said Maria de la Luz to said
above described property and that said
Don Maria having thoroughly examined
his said power and the documents
by reception of said respondent establish-
ing the right of the said Maria de la Luz
to the said land and property approved
Signed fully satisfied therewith thereto
to the Count and marked (A) by which
the said Don. Maria not as the Agent
of Another but in his own proper right
Contracted with said Maria de la Luz
to purchase of her said land and property
for the sum of three thousand dollars
two thousand of which to be paid down
and the other thousand to be paid in
two equal instalments as in petition men-
tioned the said instalments being pay-
able by said respondent that said two thousand
dollars in specie mentioned in new paid and
the possession of the land delivered up
to the said Maria in or how hands
at Stilo re main, without diminution or
or any kind of Set off or about the expira-
tion of the time for the payment of the
first instalment of the above named equal
part of the one thousand dollars agreed to
be paid as aforesaid therein called or
by said Respondent Don Mg Rascon to the said
Don. Maria as aforesaid to go with the

And receive the money on said first instalment, but instead thereof said Pino was conducted to the Land Office of Mr Ashurst And duly Arro Arlington the Commissioners of said City of Santa Fé where he saw some silver lying on the Table (which this respondent presumes is the Custom of Officers of that Character but that said silver was) never counted out or offered to said respondent nor does he know how much or for there, nor for what purpose it was there Place, your respondent was then for the first time informed that he had been trading And Contracting with said Mr Beckwith and not with said Dona Maria And that his respondents powers And documents were deemed insufficient And that said Dona Maria intended to buck Out of his said Contract And instead of honestly paying And Counting Out the sum As he had Agreed intended by some kind of legal Machinery unknown to your respondent to get back the two thousand dollars so paid as aforesaid And to never pay the other thousand Dollars agreed to be paid as aforesaid all of which Acting And doing is Contrary to the good Old Honest rules of fair trading And good faith your respondent attributes to, but denies Credit given to the said Dona Maria by Otero And not to the suggestions of his own heart And respectfully praying your respondent protest Against the distribution of the part of Dona Maria of his sum in Land Beckwith As provided in said Contract And pray in equity that so long a period of time after the execution of said Agreement As aforesaid he also protests Against the Right Claimed by the said Dona Maria

of going behind the Contract and refusing
to Carry out the said Agreement after
the same has been solemnly signed and
executed by him as aforesaid with full
knowledge on his part of all documents
papers rights and powers in possession of
said Prior relative to said land and
without the slightest imputation of fraud
bad faith or deceit espresed against your
said respondent or his principal in
making and executing said Contract
And which to the said Jose Maria remains
in undisturbed possession of said land
And property And is in receipt of
large rents. And revenues for the same
Your respondent therefore prays that
said Jose Maria Rascon be made
And Considered by the Court as a party
to this suit that the same as far as Beckwith
with is Concerned be dismissed at the
proper Cost of said Beckwith And that said
Jose Maria be Compelled by a decree of
Court to pay to your respondent as agent of
said Maria de la Luz the above named
sum of One Thousand dollars so by him
agreed to be paid as aforesaid And which
your respondent alleges has never yet been
tendered or paid either to him or to his said
principal Maria de la Luz at the same time
this respondent declares his readiness
upon payment of the same to make by
agent as aforesaid such Conveyance as
he in his said Contract (A) agreed to make
And to do what he therein agreed
to do And perform And he further states
that he has always been ready And willing
to do the same but has been prevented by
reason of failure of said Jose Maria to
perform his part of said Contract as
aforesaid that it is to pay that your respondent
is ready and willing to do and

perform honestly and bonafide as Agent
and on the part of said Principals Maria
de la Luz all this part of said Contract
marked (A) and in which not even a sus
picion of fraud or bad faith is even charged
by said Dora Maria or said Plaintiff Beck
with And prays that said Dora Maria be
also required to Carry Out his Own part
of Same and to perform with the same
good faith the Agreement made by him
and that he the said Dora Maria be also Com
pelled by this Court to pay Alvinteed and
damages which your respondent Alleges his
principals has sustained to a large Amount by
reason of the said failure and Allow the part
of said Dora Maria to perform the provisions of
this said Contract And that said Dora Maria And
said Beckwith be Compelled to pay such Other Costs
And Damages As to this Court may seem
just and right And your respondent will
ever pray &c Wheaton & Pillans for Defe
Said Answer was sworn to in the usual
manner, Document (A) above referred
to was signed Jose Maria Ramon Jacinto
Pino, And being substantially set forth
in the above Answer of Pino is not now
essential to be copied After the filing of
the above Answer of Pino On the 8th day
of August 1860 the Plaintiff Beckwith
demurred to the Answer of Pino Whether
this demurrer was ever decided by the Court
Or also in what manner it was decided
is not explained by the record before us
The Case was then continued until the next
term of the Court At the October Term of the
Circuit Court 1860 the parties Appeared &c
was heard And the Cause duly & pro
perly rendered A verdict for the Plaintiff
for the sum of two thousand seventy two dollars and
for Judgment was rendered And the Defendants
by their Jury And that said And Costs of suit

The Defendant moved to set Aside the Verdict
And grant A new trial for the following
reasons 1st That the Court Admitted illegal
Testimony before the Jury 2nd the Court mis
instructed the Jury 3rd That the Jury found
Against the law And evidence 4th The Court
refused testimony that ought to be Admitted
The record is in like manner silent
As to what disposition was made of this
motion for a new trial in the Circuit
Court During the progress of the Cause
four bills of Exceptions were Signed by the
Court upon the part of defendant and
made a part of the record 1st That the
demurrer of the plaintiff to defendants
Answer was Overruled As to plaintiffs Peti
tion As rule as to said Answer 2nd That
the plaintiff Offered to introduce as a witness
in the one Marion Rayson who being duly
his Voir dire the Court refused to Allow
Any other questions by the defendants Coun
As follows Are you directly or indirectly
interested in the event of this suit 3rd That on
the trial of the Cause a certain written Con
tract marked (A) And filed in the Cause
was introduced as testimony And proved to
be the Contract on which the suit was
founded the plaintiff introduced testimony
to show by parol testimony a different party
to said Contract which the defendant
moved to exclude from the jury on the
ground that parol evidence was Admissible
to show that Rayson made the Contract
On Account of Another which motion the
Court Overruled 4th That on the trial of
this Cause defendant offered Against
the Said 2nd Ground Prior to testifying in the
Cause who was rejected by the Court on
the 1st day of November 1851 the usual
Certificate for An appeal was made by
the said 2nd And On the 2nd day of Novem

ber 1880 An Appeal bond was executed by Jacundo Pino Jose Fran^co Bueno and Manuel Chavis And Approved by the Circuit Judge Such is the History of this Cause in the Santa Fé Circuit Court as disclosed by the record herein The Points made by the Appellant in this Cause in this Court upon which its reversal is prayed 1st The Circuit Court erred in Overruling the demurrer filed by the plaintiff to plaintiffs declaration As stated in Exception Marked (A) 2nd The Circuit Court erred in not Allowing Questions to be Asked Witnesses to show his interest & thus Cross the Questions stated in Exception Marke (B) 3 The Circuit Court erred in not Admitting the testimony of Jacundo Pino As stated in Exception Marked (C) 4 The Court erred in Allowing parol Evidence to Alter or Controvert a Written Contract As shown in Exception (C) The first error Assigned is the Overruling the demurrer filed by the plaintiff to the plaintiffs declaration The ground of this Exception when we come to examine the bill of Exception seems to be this the plaintiff filed a demurrer to the defendants Answer And the defendant Asserts that the demurrer so filed goes back to the petition And that it was the duty of the Circuit Court to have dismissed the petition The principal of the law that he who Objects to the legal Sufficiency of his Adversary pleading must Affirm that his own pleading is in substance good is a correct principle A demurrer filed by a plaintiff to a defendants Answer will Operate as a general demurrer to the petition of the plaintiff In examining Action of this petition no substantial defect in it has Occured to the Court nor has Counsel been pointed Out So far as Exception

to the Opinion of the Court is Concerned for not permitting a full Examination of the Witness Jose Maria Rascon as to his interest this Court Cannot undertake to say that the Circuit Court Committed any Error. The Party Alleging error must Show error tending to his prejudice in the Court below before this Court Can decide upon the point in dispute The bill of Exception does not Show that Jose Maria Rascon was Examined as a Witness in the Case or testified to any fact Connected with the Case And this Court Cannot undertake to presume he was Examined as a Witness in the Case, The decision of the Court in refusing to Admit Edmund Pino who was the defendant to the Suit as a Witness in the Cause was not Erroneous A Party upon the Record Although Adverse to all interest in the event of the Suit, is not a Competent Witness in the Cause Bridges vs Arnold 5 Howard Derrely vs Johnson 10 Wheaton 367 Scott vs Lloyd 12 Peters 145 Stein vs Bowman et al 13 Peters 209 The Conclusion in such Case is placed upon the ground of Policy which forbid a Party from Sworn evidence in his own Cause The 4th Error Assigned is that the Court erred in Allowing Parol Evidence to alter a Written Contract The Suit in this Case was not founded on the Written Contract that Contract may or may not have been useful to the Plaintiff As an instrument of evidence but is not made any Part of the Petition The Petition is based upon the fact that Beckwith that Pino Two thousand dollars As a Consideration which has wholly failed And therefore Should be refunded It is a correct Principal of law that money paid As a Consideration which has totally failed may be recovered back per Greenleaf Vol 2 Wheaton 13 4 Bond 7 The Case now before this Court Comes within the Principal 91 Wheaton

the Subject of appeal in this Cause
Smith & Ashurst
Attys for Appellee.

The remitter being entered It is Ordered by the Court that the Judgment of the Santa Fe Circuit Court be Affirmed at the Cost of the Appellee in this Court And that an Execution issue in this Cause against the said Facundo Pino, Jose Ygnacio Pino and Manuel Chavis for the sum of two thousand dollars debt And interest thereon from the 21st day of April 1860 until this date being the sum of two hundred And twenty nine 60/100 dollars And making in all two thousand two hundred and twenty nine dollars and sixty cents And Cost of Suit in the Santa Fe Circuit Court taxed at Dollars and Cents
It is Further Ordered that Appellee pay the Costs in this Court taxed at Fifty Dollars And thirteen Cents

Ordered that Court Adjourn until Court in Course

Read and approved.

John S. Watts
J.C. Mantz.

Judgment debtor discharged on writ of Habeas Corpus
Aug. 11, 1862.
Aug. 11, 1862. Atty for Deft

Supreme Court January Term 1853

1st Day

Pleas began and held before the Hon Lyman Baker Chief Justice of the Supreme Court of the United States for the Territory of New Mexico And John S Watts One of the Associate Justices of said Court On Monday the 3rd day of January eighteen hundred and fifty three At the Supreme Court Room in the Palace in the City of Santa Fe

The Court met at 11 Oclock AM and was Opened in due form by John Jones United States Marsal, The Hon Lyman Baxter Baker Chief Justice and John S Watts One of the Associate Justices were present The Hon Horace Mower being Absent, James M Spalding Clerk of the Supreme Court was likewise present

No 1 Eugene Leitendorfer and Isaac Livingston } Error from Santa Fe County 1st District Court
vs
James L Webb

Now Comes the plaintiff in Error by Messr Wheaton & Smith their Attorneys and file the Assignment of Errors herein

No 2 Nicolas Quintana } Error from Santa Fe County 1st District Court
vs
Richard H Dorsey

Now Comes the plaintiff in error by Mr Wheaton his Attorney and files his Assignment of Errors in this Cause

It is now Ordered that Court Adjourn until Monday the 17th of January 1853 to meet at 10 Oclock A.M.

Ordered day in the Supreme Court Room in Santa Fe

Grafton Baker
Ch Justice
John S Watts Assn Justice

Supreme Court January Term 1863

2nd day

Supreme Court met pursuant to adjournment in the Supreme Court Room in the City of Santa Fe at 10 Oclock on Monday the 19th day of January 1863
Present the Hons Grafton Baker Chief Justice And John S Watts One of the Associate Justices Horace Bower Associate Justice being Absent, Court is now Opened by John Jones United States Marshal for the Territory of New Mexico, Named in Bidding Clerk is also present

The minutes of the first days proceeding are now read Approved and Signed by the Court

On motion of Mr Arbuckle Mr Richard H Tompkins and Mr Murray H Daley are now Admitted to practice as Attorneys and Counsellors at Law in the Supreme Court of this Territory and duly sworn by Said

On motion of Mr Smith Mr Samuel H Lewis is now Admitted to practice as Attorney and Counselor in the Supreme Court of this Territory And duly sworn Arbuckle

No 1 Eugene Veitendorfer And Dorb Houghton
vs Error to Santa Fe County 1st District
James L Webb

Now Comes the defendant in error by Messrs Ashmit And Duly his Attys And files the ~~respondes~~ responder in error herein. And this Cause being now at issue is Continued until to morrow morning for further proceedings herein

No 2 Nicolas Quintana
vs Error to the Santa Fe County 1st District
Richard H Dorpkind

Now Comes the defendant in error by Mr Ashmit his Attorney And files the responder in error in this Cause And the Cause being now at issue is Continued until to morrow morning for further proceedings herein

Ordered that Court Adjourn until 10 Oclock to morrow morning

Grafton Bates
A. Justice.
John S. Watts
Ass. Justice

Supreme Court 3rd Day

The Court met pursuant to Adjournment
Present as yesterday

The minutes of the 2nd days proceedings read Approved And Signed by the Court

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No 1 Eugene Vielendorfer & Jno Houghton
Pl'ts Error to the Santa Fe County 1st Dist Court
James Webb

Now Comes the Appellants by Messrs Quinn, Smith & Wheaton and file a Motion herein for the Continuance of this Cause and after hearing the Arguments of Counsel upon said Motion and the Court not being sufficiently advised in the premises Continue said Motion under Advisement until four Oclock this Afternoon

No 2 Nicolas Quintana
Pl'ts } Error to the Santa Fe County 1st District
Richard H Tompkins

Now Comes the Appellant by Mr Wheaton his Attorney And files a Motion herein for a Continuance of this Cause And after hearing the Arguments of Counsel upon said Motion the Court not being sufficiently advised in the premises Continue said Motion under Advisement until four Oclock this Afternoon

Ordered that Court adjourn until four Oclock this Afternoon

Afternoon Session of the Supreme Court 3rd day

The Court met pursuant to Adjournment Present As in the forenoon

No 1 Eugene Vielendorfer & Jno H Houghton
Pl'ts Error to the Santa Fe County 1st District
James Webb

The Court now being fully advised upon the Motion Mr Watts

Associate Justice delivered the Opinion of the Court as follows

"A motion is made in this Cause by Appellants to Continue this Cause upon the ground that the District Judge who tried & decided Cause Cannot by the Laws of the united States give a vote in any Case of Appeal or error from his Own decision And hence no decision of this Case Can now be given by the Court as at present Constituted from the fact that but one Judge Other than the District Judge who decided this Case is now present, & the Authority relied upon in support of this motion is Contained in the 4th Section of An Act to establish the Judicial Courts of the United States Approved September 24th 1789 An Act of Congress Amendatory of the Judicial System of the United States generally passed the 29th of April 1802 which repealed the above quoted Act of Sept. 24th 1789 now in the Act of the 29th April 1802 there is no such proviso as is Contained in the 4 Section of the Act of Sept 24th 1789 And hence the present motion is without Authority to sustain it And must be Overruled It is therefore Considered by the Court that the motion for a Continuance in this Cause be Overruled

No 2 Nicolas Quintana
vs Error to the Santa Fe County District Court
Richard H Dompkins

The Court being now duly & sufficiently advised upon the motion Whereupon Associate Justice delivers the Opinion of the Court as follows

A motion is made in this Cause by the appellant to Continue this Cause upon the ground that the District Judge who tried

or error from his own decision And hence no decision of the Case Can now be given by the Court As at present Constituted from the fact that but One judge Other than the District judge who decided this Case is now present The Authority relied upon in Support of this motion is a proviso in the 4th Section of an Act to establish the Judicial Court of the united States Approved September 24th 1789 An Act of Congress Amendatory of the Judicial System of the united States Generally was passed 29th April 1802 which repealed the Above quoted Act of Sept 24th 1789 now in this Act of 29th of April 1802 there is no such proviso As is Contained in the 4th Section of the Act of Sept 24th 1789 And hence the present motion is without Authority to Sustain it And must be Overruled It is therefore Considered by the Court that the motion for a Continuance in this Cause be Overruled

Ordered that Court Adjourn until 10 Oclock to morrow morning

Grafton Gaston
Clk. pro Tem.
Jesse S. Watts Ass. Gaston

In the Court January Term 1803

4th day

The Court met pursuant to adjournment
Present As of Yesterday

The minutes of Yesterdays proceedings are now read approved and signed by the Court

No 1 Eugene Seitendorfer & Joab Houghton
vs } Error to the Circuit Ct County 1st District
James D Webb

This Cause being now ready for a hearing the Argument thereof is Commenced by Mr Wheaton on the part of the plaintiffs in error and after some time spent in the Argument of said Cause It is Ordered that Court Adjourn until this afternoon at 2 Oclock

Afternoon Sepion of Court

Present As in the forenoon

Eugene Seitendorfer and Joab Houghton
vs } Error to Circuit Ct County 1st District
James D Webb

Mr Wheaton now resumes and Concludes his Argument in this Cause And the Cause is now Continued until to Morrow morning for further proceedings therein

Ordered that Court Adjourn until 9 Oclock to morrow morning

Grafton Baker
Ch. Justice.
Peter V. Daniel
Assc. Justice

Supreme Court January Term
1853 & to Any

The Supreme Court met pursuant to Adjournment
Present As Yesterday

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The minutes of the proceedings of Court on yesterday are now read approved & Signed by the Court

No 1 Eugene Veitendorfer & Doub Stroughton Pl'ffs } Error to the Hustings Court of Petersburg
James D Webb Def't

The Argument of this Cause upon the part of the defendant in Error is now Commenced by Mr Wickham and after some time spent in the Argument of said Cause

It is Ordered that Court Adjourn until 2 Oclock this afternoon

Afternoon Session of Court

Present as in the forenoon

No 1 Eugene Veitendorfer & Doub Stroughton Pl'ffs } Error to the Hustings Court of Petersburg
James D Webb Def't

The Argument in this Cause is now Concluded upon the part of defendant in Error by Mr Wickham and upon the part of the Plaintiffs in Error by Mr Smith And this Cause for further proceedings herein is Continued until to morrow morning

Ordered that Court Adjourn, until 9 Oclock to morrow Morning

Creston Baker
Ch Justice,
John. J. Watts
Assn. Justices

Supreme Court January Term 1883

6th day

The Court met pursuant to adjournment
Present As of yesterday

The minutes of the proceeding of yesterday
Are now read approved And Signed by
the Court

101 Eugene Leitendorfer Pltf Defendant
vs Error to the Santa Cruz County 1st District
James L Webb

This Cause being now fully Argued
by Counsel is Submitted to the Court for
final decision hereon And the Court not
being Sufficiently Advised in the premises
this Cause is Continued under Advise-
ment by the Court

102 Nicolas Quintana
vs Error to the Santa Cruz County 1st District
Richard H Dimpkins

Come now the Appellee by Mr Estudillo
his Atty And the Appellant being Called
Comes not in And thereupon On Motion
of the Appellee this Cause is now Submitted
to the Court for final decision hereon
And the Court not being Sufficiently Ad-
vised in the premises this Cause is Con-
tinued under Advisement by the Court

Ordered that Court Adjourn until Monday
the 26th of February 1883 at 10 Oclock in the
forenoon

Hoston Baker
Ch. Justice.
John S. Watt.
Asso. Justice

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Supreme Court January Term 1853

The Supreme Court met at the Supreme Court Room in Santa Fe Feb 28th 1853 At 10 Oclock A M pursuant to adjournment. Present Hon Grafton Baker Chief Justice and John S. Watts Associate Justice, John Jones Marshal and James M Giddings Clerk are also in Attendance

No 2 Nicolas Quintana
Pltf Error to 1st District Santa Fe County
Richard H Tompkins
Deft

The Court being now sufficiently advised in the premises deliver the following Opinion therein pronounced by Chief Justice Baker. Vide (Copied in Record of Orders and Opinions page)

No 7 Eugene Leitendorfer Joab Houghton
Pltf Error to Santa Fe County 1st District
James L. Webb
Deft

The Court now being sufficiently advised in the premises the following Opinion is given therein by Chief Justice Baker. Vide (Copied in Record of Orders and Opinions Page)
Watts Associate Justice dissenting delivered the following Opinion " " Vide (Copied in Record of Orders and Opinions Page)

Ordered that Court adjourn until 10 Oclock to morrow morning

Grafton Baker
Ch. Justice
John S. Watts
Associate Justice

Supreme Court March 11st 1833

Supreme Court met persuant to adjourn
+ment

Present of yesterday

Eugene Leitendorfer, Josab Stoughton
Jay Vs Error to Santa Fe County first Distrct
James D Webb

The following Order is made
in this Case "to wit"

This Cause Came on to be
heard On the transcript of the Record from
the Distrct Court of the United States for the
first Judicial Distrct of the Territory of
New Mexico And was Argued by Counsel
On Consideration whereof it is now Ord
Ordered And Adjudged by this Court that
the Judgment of the District Court in this
Cause be, And the same is hereby affirmed
with Costs

Nicolas Quintana
Vs Error to the Santa Fe County 1st Distrct
Richard H Tompkins

The following Order is made
in this Case "to wit" This Cause Came on
to be heard On the transcript of the record
from the District Court of the United States
for the first Judicial District of the Territory
of New Mexico And was Argued by Counsel
On Consideration whereof it is now
Ordered And Adjudged by this Court that
the Judgment of the District Court in
this Cause be, And the same is hereby affirmed
with Costs,

The following Orders are now made
by the Court.

It is Ordered by the Court that the Clerk procure a suitable record Book, which shall be kept as a record of this Court. And wherein he shall record, in the Order in which they shall be delivered, all Opinions of the Court, or of any Judge thereof proper to be recorded.

Ordered that all Opinions so delivered shall be carefully filed and preserved by the Clerk as a part of the records of this Court.

Ordered by the Court that the Clerk of the Supreme Court be allowed the sum of fifteen Cents per hundred words for Copying in the Opinion Book said Opinions of the Supreme Court and in defaying the same

Ordered that Court Adjourn until 10 O'Clock to morrow Morning

Raphael T. Bates
Ch. Justice.
John C. Watts
Associate Justice

January term 1854. 1st day

Pleas began and held before the Hon James S Deavenport Chief Justice and John S Watts associate Justice of the Supreme Court of the United States for the Territory of New Mexico at the Court House in the City of Santa Fé on monday the 2d day of January 1854-

Court is now opened at 11 O'Clock A.M. in due form by Charles Blummer United States Marshall for the Territory of New Mexico. Present

Hon James S Deavenport Chief Justice
" John S Watts associate Justice
and Louis D Sheitz clerk of the Supreme Court

On motion of Mr Ashurst Mr Wm W H Davis is now duly admitted as an attorney of this Court and sworn as such

Joseph Secon is now appointed by the Court as bailiff during its present session and duly sworn as such

Joseph Langle
vs
Francis M'Auley } appeal

Now comes the appellant by Messrs Ashurst and Wheaton his attorneys and file in Court the assignment of errors in this case and time is given for the filing of the Briefs in Court herein,

David Waldo Jacob Hoel & Wm M M'Coy
vs
Hugh M Beckwith } appeal

Now come the appellants by Messrs Wheaton and Davis their attorneys and file the assignment of errors

Supreme Court January term 1854 1st day
in this case and time is given for the filing of
the joinder of Errors herein

James A Ward
&
James A Broadwell } Appeal

Now comes the appellant by Messrs Smith and Quinn his attorneys and file in Court the assignment of errors in this case and time is given for the filing of the joinder in errors herein

It is ordered by the Court that the appointment of Louis D Sheitz as Clerk of the Supreme Court with his bond and oath of Office be spread upon the record and the same are in these words to wit:

The office of Clerk of the Supreme Court of the Territory of New Mexico being vacant we the undersigned hereby appoint Louis D Sheitz to fill said vacancy
November 3rd 1853 J A Deaver Port
Chief Justice
John S Watts
ass Justice

Know all men by these presents that we Louis D Sheitz as principal and Henry Connelly and Manuel Alvarez as securities are held and firmly bound unto the United States in the penal sum of Two thousand dollars, for the payment of which we bind ourselves our heirs executors and administrators by these presents sealed with our seals and dated this 10th day of December A D 1853.

The condition of the above obligation is such that whereas the above named Louis D Sheitz has been appointed Clerk of the Supreme Court of the Territory of New

Supreme Court January term 1854 1st day 2d

Mexico, now if the said Louis D Shultz shall faithfully discharge the duties of his said office then this obligation to be null and void otherwise to remain in full force and effect

Louis D Shultz {Seal}
Henry Connelly {Seal}
Manuel Alvarez {Seal}

Da Reuvard acknowledged by us the day and year above written

J L Deavenport Chief Justice of
New Mexico
John S Watts Asst Justice

I Louis D Shultz Clerk of the Supreme Court of the United States for the Territory of New Mexico, do solemnly swear that I will truly and faithfully record and enter all the orders decrees and Judgements and other proceedings of said Court and that I will faithfully and impartially discharge and perform all the duties of my said office according to the best of my abilities and understanding

Louis D Shultz

Sworn to and subscribed before me this 18th day of December A D 1853

Jas L Deavenport Chief Justice
of New Mexico

It is ordered that Court adjourn until 11 Oclock A.M. on to morrow.

J L Deavenport
Chief Justice
John S. Watts
Asst. Just.

Supreme Court January term 1854. 2d day

Tuesday January 3rd

Court met at 11 O'Clock a.m. pursuant to adjournment. The Hon Sitting by Benedict associate Justice of the Supreme Court of the Territory of New Mexico now took his seat upon the bench also present the Hon James H Deavenport Chief Justice and the Hon John S Watts associate Justice of said Court. The proceedings of yesterday are now read in open Court and the minutes approved and signed by the Judges,

David Waldo Jacob Hall & Wm McCoy
vs
Hugh McBeath } Appeal

Mr Ames the appellee by Mr Ashurst his attorney and files his joinder in error in this case and by agreement of parties this cause is now set for hearing on Monday next

James A Ward
vs
James McBroadwell } Appeal

Mr Ames the appellee by Mr Ashurst his attorney and files his joinder in Error in this case and by agreement of counsel this cause is now set for trial on Thursday next

Joseph Tangle
vs
James H Quarry } Appeal

Mr Ames the appellant by Messrs Ashurst & Bradford his attorneys and the appellee by Messrs Smith and Fahey and by agreement of parties this cause is now set for trial on Friday next

Supreme Court January term 1854 2d day

Ordered that Court adjourn until 11 O'Clock A.M. on to morrow.

J J Deavenport
Chief Justice
John S. Watts
Ass. Just.
Kirby Benedict
Ass Justice

3rd day. January 4th 1854

The Court met at 11 O'Clock a.m. pursuant to adjournment
Present Hon James J Deavenport Chief Justice
" Kirby Benedict }
" John S Watts } associate Justices
of said Court.

The minutes of yesterday are now read in open Court approved and signed by the Judges.

Hartford Gooch is now appointed the Court and duly sworn as bailiff to serve as such during the present session of the Court

Messrs Davis Ashurst & Smith Attornies are now appointed by the Court for the purpose of drafting and reporting at the present term of the Court a system of rules of practice for the government of the practice in the Supreme and District Courts

Alois Spitzelberg an alien and native of Prussia makes application for a certificate of Naturalization. It not appearing from the evidence that the applicant had resided in the United States the time re-

Supreme Court Jany term 1854. 6th day

Oclock on to morrow morning.

J. D. Davenport
Chief Justice
John. S. Watts
Asso. Justice.
Hiley Bennett
Asso Justice

6th day Tuesday January 10th

The Court met at 10 A Clock Am pursuant to adjournment Present the Hon James D Davenport Chief Justice and the Hon John S Watts and Hiley Bennedict Associate Justices of said Court.

The minutes of yesterday are now read approved and signed by the Judges

David Waldo Jacob Hall & Wm M Cay
vs
Hugh M Beckwith } appeal

The argument of this case is now continued on the part of the appellee by Messrs Britton and Ashurst and Mr Ashurst not having concluded his argument the further hearing of the same is continued until 10 Oclock A M to morrow.

Josiah Argyle
vs
Francis McAuley } appeal

The Court not being ready for the hearing of this cause the same is continued for hearing until tomorrow

Ordered that Court adjourn

Supreme Court Sany term 1854

until 10 o'clock a m to morrow,

7th day Wednesday January 11th 1854

The Court met at 10 o Clock a m pursuant to adjournment Present the Hon John S Watts Associate Justice

Ordered that Court adjourn until 10 o clock to morrow morning

8th day January 12th 1854

The Court met at 10 o'clock a m pursuant to adjournment, Present the Hon John S Watts associate Justice,

In consequence of the sickness of the Hon Kirby Benedict Court is adjourned until Monday next at 10 o'clock A.M.

J H Lavenport
Chief Justice
John S. Watts
Asso. Justice

9th day January 16th 1854

Court met pursuant to adjournment Present Hon James H Lavenport Chief Justice and the Hon Kirby Benedict and John S Watts associate Justices,

The minutes of the ~~Eighth~~ seventh and eighth day are now read approved and signed,

Ordered that Court adjourn until 10 o'clock a.m. to morrow

J H Lavenport
Chief Justice
John S. Watts
Asso. Justice.
Kirby Benedict
Asso Justice

10th day. Supreme Court Jany term 1854.

Tuesday January 17th 1854

Court met pursuant to adjournment. Present as of yesterday

The minutes of yesterdays proceedings are now read approved and signed

David Waldo Jacob Hall & Wm McCoy
vs
Hugh McBeckwith } appeal

The argument in this cause is now continued by Mr Ashmun on the part of the appellee and by Mr Whiton on the part of the appellants and Mr Whiton not having concluded, the further hearing of this cause is deferred until to morrow

Ordered that Court adjourn until 10 oClock A.M. to morrow.

J. J. Deavenport
Chief Justice
John S. Watts
Ass. Justice,
Hiram Benedict
Ass. Justice

12th day. Wednesday Jany 18th 1854

Court met pursuant to adjournment
Present as of yesterday

The minutes of yesterdays proceedings are now read approved and signed

David Waldo Jacob Hall & Wm McCoy
vs
Hugh McBeckwith } appeal

The argument in this cause is concluded by Mr Whiton and the cause is now submitted to the Court for Consideration

11th day. Supreme Court Jany term 1854

Ordered that Court adjourn until 10 Oclock A.M. to morrow.

J. D. Davenport
Chief Justice
J. Clark. S. Watts
Asso. Justices
Henry Benedict
Aps Justice

12th day. Thursday January 19th 1854

Court met pursuant to adjournment. Present as of yesterday.

The minutes of yesterday's proceedings are now read approved and signed.

Messrs Quinn and Wheaton are added to the Committe to draft rules for the Government of the practice in the Supreme and District Courts,

Joseph Jongle
vs
Francis V. Autry
} Appeal

The transcript in this cause is now read, and the argument in this cause opened by Mr Wheaton on the part of the appellant, and Mr Wheaton not having concluded the further hearing of the same is defered until to morrow,

Ordered that Court adjourn until 10 O Clock A.M. to morrow.

J. D. Davenport
Chief Justice
J. Clark. S. Watts,
Asso. Justice.
Henry Benedict,
Aps Justice

13th day. Supreme Court. Sany term 1854

January 20th 1854

Court met pursuant to adjournment,
Present as of yesterday.

The minutes of yesterday's proceedings are now read approved and signed,

Joseph Tangle
vs
Francis K Autry } Appeal.

The argument on the part of the appellant is continued by Mr Wheaton and he having concluded his remarks the further hearing of this cause is deferred until to morrow,

Ordered that Court adjourn until 10 oClock a.m. to morrow.

J D Davenport
Chief Justice
John S Watts
Asso. Justice
Kirby Benedict
Asso Justice

14th day January 21st 1854

Court met pursuant to adjournment
Present as of yesterday.

The minutes of yesterdays proceedings are now read approved and signed

Joseph Tangle
vs
Francis K Autry } Appeal

This cause is now argued by Mr Smith on the part of the appellee and by Mr Ashurst on the part of the appellant and submitted to the

14th day. Supreme Court Sat term 1854

Court.

Ordered that Court adjourn until Monday the 30th day of this month, at 10 O'clock A.M.

J J Deavenport
Chief Justice
John S. Watts
Asso. Justice.
Kirby Benedict
Asso Justice

15th day January 30th 1854.

Court met pursuant to adjournment Present: Hon Jas J Deavenport Chief Justice and the Hon Jno S Watts, and Kirby Benedict Associate Justices.

The minutes of the fourteenth days proceedings are now read approved and signed.

The Court not being sufficiently advised in the causes submitted to them. It is ordered that Court adjourn until Monday next at 10 O'Clock A.M.

J J Deavenport
Chief Justice
John S. Watts
Asso. Justice.
Kirby Benedict
Asso Justice

16th day. Supreme Court

February 16th 1854

Court met pursuant to adjournment Present Hon James S Deavenport Chief Justice and the Hon Jno S Watts and Kirby Benedict associate Justices

The minutes of the 15th days proceedings are now read approved and signed.

James A Ward
vs
Jas A Broadwell } Appeal from the District Court for the County of Santa Fe

This cause having been submitted to the Court at former day and the Court now being fully advised in the premises deliver their opinion by Justice Watts, as follows.

This was an action of replevin brought by James A Ward against James A Broadwell for one buggy and one set of harness for two horses. The suit was instituted on the 20th day of June ao 1853. The Replevin act under which this suit was brought, was passed by the General assembly of the Territory of New Mexico, at its December session 1848. The treaty of Guadalupe Hidalgo was made on the 2d day of February 1848. The Question which first suggests itself to the consideration of the Court, is this, was the Replevin act under which this suit was brought passed by that General Assembly, after the treaty of Peace and before the passage by Congress of the organic Law, under which a territorial Government was organized how a valid or void act. If the law emanated from a body having no Legislative power or legal existence it is void and no rights can be asserted under it. The first

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Legislative assembly of the Territory of New Mexico convened under the Organic Law of 9th September 1850, on the 14th day of July 1851 passed an act the first section of which, reads as follows "That all laws that have been previously been in force in this Territory, that are not repugnant to or inconsistant with the Constitution of the United States, the Organic Law of this Territory or any act passed at the present session the Legislative Assembly, shall be and continue in force, excepting in Kearny's Code the law concerning Register of Land," The Laws of the Territory, Sec 1 page 176. If the Replevin Act ever was in force that act continued it in existence. The capacity then of the General assembly of the Territory of New Mexico to enact at its December session 1847 a valid law is now the point for consideration. On the 13th May 1846 Congress acknowledged the existence of a state of war between the United States and the Republic of Mexico, and provided for its prosecution In the prosecution of that war General Kearny marched with forces of the United States against the Department of New Mexico and took possession of it Gen Kearny on the 22nd day of August 1846, issues to people of said Department, a proclamation in which he says. "as by the act of the Republic of Mexico a state of war exists between that Government and the United States, and as the undersigned at the head of his troops, on the 18th instant took possession of Santa Fe, the Capital of the Department of New Mexico, he now announces his intention to hold the department with its original boundaries (on both sides of the Del Norte) as a part of the United States, and under the name of the Territory of New Mexico" On the 22nd day of September 1846. Gen Kearny enacted an Organic Law

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for the Government of the Territory and a system of laws for the administration of Public Justice and the protection of the life liberty and property of the people of New Mexico. Known generally as the Kearny code. A copy of these laws and a list of the appointments to civil offices in the Territory was enclosed to the adjutant General on the 22d September 1846, and were received at the war department on the 23 November 1846. Thus the Supreme authority and sovereignty of the Republic of Mexico ceased to exist in New Mexico and its assumption and exercise upon the part of the United States as the conqueror of this Territory began. Under what authority did this state of things take place and of what binding effect is the system of Government thus instituted? This was a Conquered Territory and in the case of the Canal appraisers vs the People, 17th Wendall 584. its was decided that. "There is no doubt of the power of the sovereign to change the laws of a conquered or ceded country by a mere declaration of his will, without any formal act of Legislation, unless restrained by the capitulation or treaty or treaty of cession. No formal act of Legislation is necessary to change the law. The mere will of the Conqueror is sufficient 1 Kent 178. Note (a) This principle of law that a conqueror has the right to enact laws for the Government of his conquest while in his possession is illustrated and explained with reference to New Mexico in the message of the President of July 6th 1848. Ex. Doc No 70. as follows, On my message of December 22d 1846 in answer to a resolution of the House of Representatives calling for information

"in relation to the establishment or organization of civil government in any portion of the Territory of Mexico which has might be taken possession of by the army or Navy of the United States" I communicated the orders which had been given to the officers of our army and Navy, and stated the general authority upon which temporary military governments ~~authorized~~ had been established in the conquered portions of Mexico, then in our military occupation. The temporary governments authorized were instituted by virtue of the rights of war, The power to declare war against a foreign country and to prosecute it according to the general laws of war, as sanctioned by civilized Nations, it will not be questioned exists under our Constitution, When Congress has declared that war exists with a foreign nation "the General laws of war apply to our situation". And it becomes the duty of the President as the Constitutional Commander in chief of the army and Navy of the United States" to prosecute it. In prosecuting a foreign war thus duly declared by Congress we have the right by "Conquest and Military occupation" to acquire possession of the territories of the enemy, and during the war to exercise the fullest rights of Sovereignty over it." The Sovereignty of the enemy is in such cases "suspended" and his laws can no longer be rightfully enforced" over the conquered territory" or be obligatory on the Inhabitants who remain and submit to the conquerer. By the surrender the inhabitants pass under a "temporary allegiance" to the conquerer, and are governed by such laws,

and such only, as he may choose to recognise and impose, from the nature of the case no other laws could be obligatory upon them, for where there is no protection or allegiance, or sovereignty there can be no claim to obedience

These are well established principles of the laws of war, as recognized and practised by civilized nations, and they have been sanctioned by the highest Judicial tribunals of our Country

The orders and instructions issued to the officers of our army and Navy applicable to such portions of the Mexican Territory as had been or might be conquered by our arms, were in strict conformity to these principles. They were indeed ameliorations of the rigors of war, upon which we might have insisted. They substituted for the harshness of military rule something of the mildness of civil government and were not only the exercise of no excess of power, but were a relaxation in favor of the peaceable inhabitants of the conquered territory who had submitted to our authority and were alike merciful and humane. The President further says that New Mexico and upper California were among the territories conquered and occupied by our forces and such temporary governments were established over them. They were established by the officers of our army and Navy in command, in pursuance of the orders and instructions accompanying my message to the House of Representatives of December 22, 1846

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In this form and detail, as first established they exceeded in some respects as was stated in that message the authority which had been given, and instructions for the correction of the error were issued in dispatches from the War and Navy departments." of the 11th of January 1847. (Copies of which are herewith transmitted) In order to ascertain in what respect the Government of New Mexico, as established by Gen Kearny exceeded the authority given, and what error said dispatches were intended to correct. W L Marcy Secretary of War in his dispatch says. "It is proper to remark that the provisions of the laws which have been established for the Government of the Territory of New Mexico &c, in some few respects beyond the line designated by the President and propose to confer upon the people of that Territory political rights under the Constitution of the United States, Such rights cannot be acquired by the action of Congress So far as the Code of laws established in New Mexico, by your authority attempts to confer such right it is not approved by the President, and he directs me to instruct you not to carry such laws into effect.

The term political right in its most extended signification, is "the power to participate directly or indirectly in the establishment or management of government" See Bou Law Dictionary vol 2 title rights page 475. But the Secretary of War does not use the term in that sense but he qualifies its signification, by saying political rights under the Constitution of the United States"

It is now necessary to examine the laws which had been established for

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the Government of New Mexico for the purpose of seeing what political rights under the constitution of the United States had been conferred upon the people of the Territory of New Mexico. all the laws then enacted will be found in the Kearny Code and section 8 of article 3 of the Organic law of the Territory of New Mexico established by Gen Kearny 22nd September 1846 is as follows, "All free male citizens of the Territory of New Mexico who then are and for three months next preceding the election shall have been residents of the County or District in which they shall offer to vote, shall be entitled to a vote for a Delegate to the Congress of the United States, and for members of the General assembly, and for all other officers elected by the people" Section 9 The first election for a Delegate to the Congress of the United States and for members of the General assembly shall be on the first monday in August AD 1847. And the Governor by proclamation shall designate as many places in each county as may be necessary for the public convenience at which the electors shall vote, Provided that the General assembly shall convene at Santa Fe on the first Monday in December AD 1847, and on the first monday in December every two years thereafter until otherwise provided by law. If there are any other laws which were then in existence to which the Secretary of war alluded which conferred upon the people of this Territory any political rights under the Constitution of the United States, they have escaped our attention. If we be right in this, the

declaring their allegiance to the authority given to elect a Delegate to Congress as the only exercise of authority enjoyed by those Cases beyond the line designated by the President. His point is presented more in detail in instructions prepared under the direction of the President by the Secretary of the Navy in his instructions to Commodore Stockton dated February 11 1847 The Secretary of the Navy says. The possession of portions of the enemy's territory acquired by justifiable acts of war gives to us the right of Government during the continuance of our possession and imposes on us a duty to the inhabitants who are thus placed under our dominion The right of possession however is temporary unless made absolute by subsequent events. Of being in possession a treaty of peace is made and duly ratified on the principle of uti possedetis, that is that each of the belligerant parties shall enjoy the Territory of which it shall be in possession at the date of the Treaty or if the surrender of the Territory is not stipulated in the treaty so ratified then the imperfect title acquired by conquest is made absolute, and the Inhabitants with Territory, are entitled to all the benefits of the Federal Constitution of the United States to the same extent as the Citizens of any other part of the Union. The course of our government in regard to California or other portions of the Territory of Mexico now or hereafter to be in our possession by conquest depends on those on whom the Constitution imposes the duty of making and carrying treaties into effect. Pending the war our possession gives only such rights as the laws of nations recog-

nize, and the Govermnt is mistaken performing such civil duties as are necessary to the full enjoyment of the advantages resulting from the conquest and to the due protection of the rights of persons and property of the inhabitants.

No political right can be conferred upon the inhabitants, thus situated emanating from the constitution of the United States. That instrument establishes a form of Government for those who are within our limits, and our voluntary allegiance to it. unless incorporated with the assent of Congress by ratified treaty, or by legislative act as in the case of Texas. our rights over enemies territory in our possession are only such as the laws of war confer and these is no more than are derived from the same authority. They are therefore entitled to no representation in the Congress of the United States Nor as it was the object of this dispatch to correct the errors which had been committed in the organization of the civil government here and as no error is specified or pointed out in the dispatch but that of giving the people in this territory a representation in the Congress of the United States, it is but rational to conclude that new other existed in the laws or form of civil government adopted for this Territory. That the error alluded to, did not consist in permitting the people elect agents to assist in the making or execution of the laws for the government of the people of this ter-

nitory, is evident from the following paragraph from the same despatch. "In the discharge of the duty of government in the conquered territory during our military possession it has not been deemed impropper or unwise that the inhabitants should be permitted to participate in the selection of agents to make or execute the laws to be enforced. Such a privilege can not fail to procure ameliorations in the despotic character of martial law, and constitute checks voluntarily and appropriately submitted to by officers of the United States, all whose instructions are based upon the will of the governed. I have regarded your measures in authorizing the election of agents charged with the making laws or executing them as founded on this principle and so far as they carry out the right of temporary government under existing rights of possession they are approved. But no offices created or laws or regulations made to protect the rights or perform the duties resulting from our conquest, can lawfully continue beyond the duration of the state of things which now exist without authority of future treaty or act of Congress. Upon the subject of the duration of such temporary government, the President in his message of July 24th 1848. says On the conclusion and exchange of ratifications of a treaty of Peace with Mexico, which was proclaimed on the 4th instant, these temporary governments necessarily ceased to exist." From this view of the subject we infer that the legislative assembly which convened in December 1849, was a lawful law making agent of the military command of this Territory and that the acts

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passed by ~~them~~ said assembly were valid when approved by said military commandant in so far as they did not confer on the inhabitants political rights eminating from the Constitution of the United States. That the laws passed at the December session 1847. of the General Assembly of the Territory of New Mexico were approved by the commanding General of this Territory will appear by the following order

Special Orders } Head quarters 9th Military Department Santa Fe
No 5 } N M February 5th 1848.

The foregoing legislative enactments of the Territory of New Mexico having been duly reviewed by the Commanding General of the Territory, ~~are~~ thereby approved and will be duly observed.

By order of Brigadier General
W E Prince A.D.C. & A.A.A. Gen } Sterling Price

The Kearny code and the acts of the December Session 1847 of the General Assembly of the Territory of New Mexico were valid subject to the restriction above alluded with regard to the political rights under the Constitution of the United States

But it is suggested that as the temporary government established here, ceased to exist on the conclusion and exchange ratifications of a treaty of peace with Mexico the laws passed by said temporary civil Governments ceased to exist also unless perpetuated by the treaty itself.

There is nothing in the treaty upon this subject except what is contained in the first paragraph of the 9th Article, which is as follows. "The Mexicans who in the territories aforesaid shall not preserve the character of citizens of the Mexican Republic, conformable with what is stipulated in the

succeeding article shall be incorporated into the Union of the United States and admitted as soon as possible according to the principles of the federal Constitution to the enjoyment of all the rights of Citizens of the United States. In the meantime they shall be maintained and protected in the enjoyment of their liberty their property and the civil rights now vested in them according to the Mexican laws, with respect to political rights their condition shall be on an equality with that of the inhabitants of the other territories of the United States and at least equally good as that of the Inhabitants of Louisiana and the Flo rida when those provinces by transfer from the French Republic and the crown of Spain became territories of the United States. Now civil rights are those which have no relation to the establishment support or management of the Government. Those consist the power of acquiring and enjoying property of exercising ~~and enjoying~~ the paternal and marital powers and the like See Bouvier Law Die Vol 2 title rights Page 475. We do not consid er that the treaty in fact provided any system of Government or laws for the ceded Territory but only provided that civil rights which had been legally vested by Mexican laws in Mexican Citizens (why or the nature should be american citizens) should not be taken away from them and such would have been the law had noth ing been said about it in the treaty. During the war the temporary civil Government es tablished here was a Government de Jure under the laws of Nations, after the rati fication of the treaty the civil government went on not as a government de Jure but as a government de facto under the laws of Nations, and with the assent tacit at least of the Congress of the United States

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and the People of this Territory. The treaty of peace by the cession of New Mexico, to the United States changed the Jurisdiction and sovreignty over this Territory from the Republic of Mexico to the United States but it had no effect nor does it pretended to have any effect upon the system of government prevailing, or the laws in force at the time of the cession; It has been well settled by the authority of adjudged cases, that the laws usages and municipal regulations in force at the time of the Conquest or cession remain in force until changed by the new sovreign Calvins case 7 Co 17

Campbell vs Hall Cowp R 209

9 Peters 711

1 Kent 748 749

Strother vs Lucas 12 Peters 410

The Situation of California and of New Mexico were identical so far as both in turn Mexican governments were concerned and the intervention of some time between the conclusion of peace and the extension of the laws of the United States over them how if Congress alone had power to legislate for California and New Mexico and for some time did not do so, until Congress did legislate the Government and laws existing at the date of treaty would still exist and continue until changed by the new sovreign, The United States, This view of the case is sustained by the President of the United States in his message of 21st January 1850 in which he says. On coming into office I found the military commandant, of the department of California exercising the functions of civil governor in that territory and left as I was to act under the treaty of Guadalupe Hidal

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for without the aid of any legislature however establishing a government in that territory I thought it best not to disturb that arrangement made under my predecessor until Congress should take some action on that subject. I therefore did not interfere with the powers of the Military commandant, who continued to exercise the functions of civil Governor as before, but I made no such appointment conferred no such authority and have allowed no increased compensation to the commandant for his services the same thing might have been said with regard to New Mexico, That the laws in force at the making of the treaty continued and that the form of civil government in existence continued as a Government de facto, is admitted and defended as a government by the Hon James Buchanan in a letter from the department of State, dated October 7th 1848 addressed to William T Brookes esqr. Mr Buchanan after expressing the disapprobation of the President at the failure of Congress to establish a territorial Government for California says in the meantime the condition of the people of California is an anomalous and will require on their part the exercise of great prudence and discretion. By the Conclusion of the treaty of peace, the military government which was established over them under the laws of war, as recognized by the practice of all civilized nations, has ceased to derive its authority from this source of power But is there for this reason no Government in California? Are life liberty and property under the protection of no existing authority? This would be a singular

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phenomenon in the face of the world, and especially among American citizens distinguished as they are above all other people for their law abiding character

Fortunately they are not reduced to this sad contention. The termination of the war left an existant government, a government de facto in full operation, and this will continue with the presumed consent of the people until Congress shall provide for them a territorial government

The great law of necessity justifies this conclusion, the consent of the people is inevitably inferred from the fact that no civilized community could possibly desire to abrogate an existing government when the alternative presented would be to place themselves in a state of anarchy, beyond the protection of all law, and reduce them the unhappy necessity of submitting to the dominion of the strongest. Similar in this respect was New Mexico to California and the above views are equally applicable to both. The Hon John M Clayton in letter from the department of State dated 3d April 1849 addressed to the Hon Thomas Butler King expressed similar views to those of Mr Buchanan, Mr Clayton says the laws of California and New Mexico as they existed at the conclusion of the treaty of Guadalupe Hidalgo regulating the relation of the inhabitants with each other will necessarily remain in force in those territories. Their relations with their former Government have been dissolved and new relations created between them and the Government of the United States but the existing laws regulating

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the relations of the People with each other will continue until
other lawfully enacted shall supersede them
Our naval and military commanders
on those stations will be fully instructed to
co operate with the friends of order and
good government so far as their cooperation
can be useful and proper. It is evident
that Gen Price did not regard the dispa-
tches of Gen 11 1847 from the War and
Navy departments as inhibiting him from
using the assistance of a Legislative as-
sembly in the making of the laws or he
would not with those dispatches before him
have approved the laws passed by the
General Assembly of the Territory at the
December session 1847. If this view of
the case be correct the Replevin act of
December 1847 was passed by a lawful
agent of the Commanding General of
the Territory and was by him approved
and therefore a valid law in force in
this Territory on the 10th day of July 1851
and by an act of the Legislative Assem-
bly of the Territory of New Mexico of that
date continued in force. No actual pos-
session or visible exercise of sovereignty
over New Mexico was ever perfected by
the State of Texas and the claim in dis-
pute between her and the United States
has been finally settled, leaving the
United States her laws and the Civil
power of government by her established
in undisturbed operation. No further
notice need be taken of this incorporate
claim of Texas which has been satis-
factorily extinguished. We will now
proceed to consider the other points
in this case

The 35 Section of the act of

the Legislative assembly in regard to the actor of Replevin reads as follows. Before the writ of Replevin be issued the plaintiff or some creditable person in his stead shall file in the office of the clerk of the circuit court an affidavit alleging that the plaintiff is lawfully entitled to the possession of the property mentioned in the declaration that the same was wrongfully taken or wrongfully detained by the defendant and that the right of action accrued within one year. See laws of the Territory Sections Page 443. George Merritt as agent of the plaintiff Ward filed the affidavit required by said section. Section 4 of the same act, reads as follows the plaintiff or responsible person shall before the execution of the writ enter into bond with sufficient securities to the officer to whom the writ is directed in double the value of the property contained for the prosecution of the suit, with effect and without delay make return of the property if a return is adjudged, keep harmless the officer and pay all costs that may accrue, The bond required by this section was executed by George Merritt as agent for James Ward as principal and Ceran St Vrain and James H Quinn as securities The 5th Section of the same act, reads as follows in case the plaintiff fails to prosecute his suit with effect and without delay Judgement shall be given for the defendant and shall be entered against the plaintiff and his securities for the value of the property taken

and double damages for the use of the same from the time of delivery and it shall be in the option of the defendant to take back such property or the assessed value thereof" The defendant Broadwell pleaded not guilty to the petition, and the cause was tried by a jury at June term 1853 of the District Court and in conformity with the section last mentioned a Judgement was rendered on said trial against Merritt & Brain and Quinn for the value of the property and damages and costs, From this Judgement the Plaintiff Ward takes an appeal to this Court. The record in this case after noticing the appearance of the parties, the coming of a Jury and the submission of the issue to the Jury, reads as follows, Whereupon the said Plaintiff fails to prosecute his said suit further, and thereupon the Jury is discharged from further consideration of the premises. therefore it is considered by the Court that the said defendant go hence without day and recover of the said Plaintiff Leo Merritt, Leran St Brain and James H Quinn his securities, his damages by reason of the premises" A Jury was then called and the value of the property assessed at $125, the damages at $30 and judgement rendered against them for the value of the property damages and costs. There was a motion made and overuled to set aside the non suit and grant a new trial for the alledged reason that the Court erred in excluding Leo N Merritt as a witness in the case, The circumstances under which said witness was proceeded to

the Court and excluded from giving evidence are contained in the following bill of Exceptions, to wit, Be it remembered that on the trial of the above entitled cause the plaintiff offered Geo W Merritt principal on the Replevin bond as agent of plaintiff as a witness in this case, said witness was sworn on his voir dire, and stated that he had no interest in the event of said suit that he had only acted as agent for plaintiff in bringing the suit and filing the bond and that witness considered himself indemnified for all loss he might sustain in the case. Plaintiff then offered to substitute an other person on the Bond in the place of said Merritt. but the Court refused to permit the substitution of an other person in the place of said Merritt and refused to permit said Merritt to testify in said cause. To which refusal on the part of the Court to permit said witness to testify the plaintiff by his counsel excepts and files herewith his bill of exceptions and prays that it may be signed sealed and made a part of the Record in this case which is accordingly done.

The appellant in this case insists that the Court below erred in refusing to permit the witness Merritt to testify for the Plaintiff and also in refusing to permit the Plaintiff to substitute an other person in the Replevin Bond in the place of Merritt. The appellee contends that the judgement in this case is nothing but a voluntary non suit from which the plaintiff below could not appeal that Merritt was properly excluded

from giving evidence in the cause for the reason that he was a party to the suit and had a direct pecuniary interest in the result of the suit then pending and that the question of substitution was a matter of discretion with the Court below, not probably the subject matter of a review in this Court. The authorities are clear that a voluntary non-suit can not be made the subject of error. See the following cases Collins vs Nichols et al 2 M & R 132, Union Bank vs Lam 2 Hum 345, 324, Norton vs Byers 3 Hawks 228. A Judgement of non-suit is based upon the presumption that the party is called does not answer and elects to go out of Court with a Judgement for costs against him leaving the merits of the controversy open for investigation in a subsequent suit. The parties in this case have chosen to call this Judgement in the case now under consideration a non-suit but the Court has arrived at different conclusion. The Judgement in this case in the Court below is a final Judgement against the Plaintiff and in favor of the defendant for want of prosecution of the case with effect when the suit of the Plaintiff. It gave to the defendant all he could ask, the value of the property replevied by the Plaintiff double damages and costs, we do not perceive what additional elements of finality could be added to this Judgement. If this were not the correct view of the legal effect of the Judgement in this case still we are not prepared to admit even if the Judgement in this case could be considered a non-suit that it was voluntary when the suit of the Plaintiff be-

how there a party has been compelled to abandon his case in consequence of an adverse decision of the Court to which he excepts upon a trial point in his cause, He can by no means be forced to concede that his action was voluntary. The plaintiff below was not thus precluded from appealing said cause from the Court to this Court for review. It is contended by the appellee that Merritt the witness offered to be examined was a party to the record and from that fact alone aside from the Question of Interest was incompetent as a witness This question was before this Court at the January term 1852 in the case of Pino vs Beckwith And it was then decided in accordance with the authorities then cited that a party on the Record although divested of all interest in the event of the suit, is not a competent witness in the cause, But in the case now before the Court, we do not consider the witness Merritt as the time he was offered as a witness to have been a party to the suit on the record, The case stood on Record as Burden, Broadwell and the more circumstance that Merritt by failing to prosecute his suit in the effect might place the witness Merritt in a situation which would authorize the Court below to render a Judgement against him. If that act could be enforced by the Court is not alone sufficient evidence that he Merritt was then a party to the Record wherefor the fact of whether a person is a party to the record or not depends upon the balancing of a further court which may or may not take place

such person ought not to be regarded as a bar to the Record until such future event has happened When a witness is presented in Court for examination and his competency objected to upon the ground of interest, there are two methods by which such interest may be proven 1st by examining said witness on his voire dire 2d By proving his interest aliunde, But the principle of law is well settled that you cannot resort to both of these methods at the same time In support of this position see the following cases Mc Iffin vs Bingham 1 Dall 172, Mallet vs Mallet 1 Rich 501 McAlister vs Williams 1 Overt 107, 119, Bridge vs Pellington 1 Mass 219 Chaney vs Hine 6 Conn 231. In the case of Derr vs Osgood 2 Dyer 28 it was decided by the Court that if a witness is put upon the voire dire as to interest and purges himself of interest the objection at trial is not admissable either at that trial nor on motion for a new trial. The objecting party having once made his election of ~~mode~~ of proof shall not afterwards use another mode The same principle was decided in the case of Bisbee vs Hall 3 Hamm 449. In the case now before us the party objecting to the competency of Merritt as a witness upon the ground of interest in the event of the suit elected to examine him touching that interest upon his voire dire When such examination Merritt stated that he had no interest in the event of said suit, that he had only acted as agent for said Ward in bringing the suit and filing the bond and that witness considered himself indemnified for all loss he might sustain in the case

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Notwithstanding the witness considered himself ~~uninterested~~ disqualified in the suit we think the Court below was right in coming to the conclusion from the facts stated by the witness that he was in fact interested in the event of the suit in such a manner as rendered him incompetent to testify while that interest continued to exist, We look upon Merritt St Train and Quinn all as sureties for Ward, and as having by the Replevin bond bound themselves that Ward should prosecute his suit of Replevin with effect and without delay and on his failure to do so that he Ward would pay the assessed value of the property double damages and costs to the defendant Broadwell. That Merritt had as the security of Ward in the Replevin bond such a direct immediate and subsisting pecuniary interest in the event of the suit then pending as would exclude him as witness is too clear to need either Authority or argument to unfold it many Authorities have been referred to in the argument of this case by the Appellant's Counsel touching the disqualification of a witness upon the ground of interest in the event of the suit and of the duty of Courts to permit said interest to be released We do not consider it worth while to consider that feature of the case for the reason that the record does not disclose that any person either executed or offered to execute a release to Merritt of his interest in the suit. The bill of exceptions in this case further states that

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the plaintiff then offered to substitute an other person on the bond in the place of said Merritt but the Court refused to permit the substitution of an other person in the place of said Merritt, It is argued by the counsel for the appellee that the question of substitution was one addressed to the discretion of the Court below and is not reviewable in this Court. We think differently. The discretion of a Court must be always be exercised in conformity with law and the usages of Courts and if not so exercised is susceptible of being reviewed in a superior tribunal upon the question of substitution of a new security in lieu of the one offered as a witness we are not without the light of adjudicated cases to guide us Phillipps on evidence Vol 1 Page 89 says A Surety in a Replevin Bond is interested in procuring a verdict for the plaintiff in the same manner as bail are interested in procuring a verdict for the defendant and is therefore incompetent, but if his testimony be required the Court will permit the substitution of a new surety in lieu of the witness, in order that the latter may be rendered competent. The same principle was decided in the case of Bailey vs Bailey, 8 Pick 92 also in 7 Mass 439, S.C. We can not perceive how any injury would result to the defendant in the Court below by permitting the substitution to be made We can perceive how the plaintiff in the Court below might have a just and meritorious cause upon the refusal of a Court to permit the substitution

of a new surety in lieu of the witness offered. On the refusal of the Court below to permit the plaintiff to strike out the name of Merritt and substitute a new surety in his place he think the Court erred and the Judgement must be reversed

Chief Justice Davenport dissenting delivered the following opinion

This is an action of Replevin instituted by the appellant against the appellee in the Court below under the laws of this Territory, vide Laws of Mexico page 114. The affidavit as well as the bond required by the provisions of the Statute were both made by Benjamin Merritt upon the trial of the case below said Merritt was tendered by plaintiff as a witness and objections were made as to his competency on the ground of his signature to said bond These objections were sustained by the Court The plaintiff then proffered to relieve said Merritt from his incompetency by substituting another person in his stead and releasing him from said bond, To this release and substitution objection was also taken and the Court below sustained the same, The Plaintiff thereupon suffered a non suit. Upon which the defendant obtained a judgement against the plaintiff and obligors to said bond for the value of the property taken and double damages for the use of the same. Afterwards the plaintiff entered a motion to set aside the non suit which motion being overruled exceptions were taken and the case brought to this Court for revision,

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It is insisted in argument that this being a case of voluntary non suit no appeal will lie. I do not conceive it to be a case of voluntary non suit but rather one where the plaintiff on account of his witness being ruled to be incompetent was constrained to such a course, considering it then as being one of rightful appeal. I shall proceed to notice only such grounds of error, as those upon which I differ with the opinion delivered.

Courts should ever be guarded that while expounding the laws of one country, that by too readily adopting the decisions made in others when a like subject against that species of adjudication, which may impose those foreign laws upon the people without their legislative sanction. And especially in the United States. Where each State has its seperate laws differing one from the other, so much in detail although they may pertain to the same subject matters of legislation. To exemplify this I will only instance that it is a universal rule of Construction that all remedies created by statute, in contradiction of the Common law remedies are to be construed strictly. But in some of the States Statutory remedies are created and by the laws of those very States it is expressly enacted that they shall be construed liberally. In those States where these remedial Statutes exist, Where those Statutory remedies are construed with reference to them, but where no such remedial Statutes

do not then the Common law rule of strict Construction prevails. And probably in almost every decision when there is a departure from the common law rule, it will be found that such departure is founded on some particular enactment which authorizes it. Is there any statute in this Country which authorizes the Court to depart from the Common law rule of Construing all statutory remedies in Contravention of Common law remedies. I know of none, Then testing this case by this rule, I shall proceed to point out the difference which exists between and myself In reference to the power of the Court to release said Merritt from his bond in this case and the substituting another person in his stead in order to render him a Competent witness. The 11th Section of the Replevin act is as follows. The Plaintiff or some responsible person shall before the execution of the writ enter into bond with sufficient securities to the officer to whom the writ is directed in double the value of the property ordered for the possession of the suit with effect, and without delay make return of the property if return is adjudged & shall harmless the officer and pay all costs that may accrue. Now this Section clearly points out and makes it a precedent step in this Statutory form of action that before the writ shall be served, or in

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other words before the defendants possession to the property can be disturbed, that the plaintiff or some responsible person shall enter into bond &c vide laws Territory page 413, Either the plaintiff or some responsible person may enter into such bond, but if either the one or the other does so, each is required to give securities &c. in this case the plaintiff did not enter into bond, but Merritt as a responsible person in the language of the statute did. And as such responsible person the statute required that he should enter into such bond with sufficient securities, Hee did so now the question arises, what relation does Merritt as such responsible person bear towards the plaintiff and his own securities. For the purpose of this suit I hold that both Merritt and his securities are the securities of the plaintiff and upon the plaintiffs failure to prosecute this suit that Judgment may be rendered against plaintiff and all the parties on the Replevin bond. Vide 4 Sec Replevin act Laws of Territory p 413. but as between Merritt as the responsible person in such bond does he not stand in reference to his securities as principal. As between him and them does he not stand as their (principal) and they as his securities By reference to the attachment act of the Territory laws of Territory p 39 Sec 4. It will be seen that the bond there required may be entered into either by the plaintiff or some responsible person as principal with two or more securities &c Refer to this clause

in the attachment law to show that
there the responsible person is expres-
ly named principal, and that the
mere omission of that word in the
Replevin act does not make the
responsible person in a Replevin
bond less a principal on that ac
count. What is meant by this term re
sponsible person and why is this term
used in the law, It is evident that
these actions being extraordinary created
by statute in contravention of the common
law remedies and when the property
of the defendant is seized, that the law
intended when any person resorted to
them that the defendant should have
some responsible person bound for all
the damages he might suffer for the
wrongfully suing out such writs. The
mere circumstance of the bond being
payable to the officer amounts to noth
ing as a conclusion against its being
for the benefit and protection of the
defendant as the 10 Sec of said act
shows that defendant may sue when
it Pride Laws of Dak h 411t. The respon-
sible person & their deem as the prin
cipal in the bond and these who sign
it with him are bound said bond
his securities now if another person
is substituted in the place of such
responsible person are not his securi
ties released and does not the bond
wholly fail. Such seems to my mind
the inevitable result, as the statute re
quires that such responsible person
shall enter into bond with sureties.
these securities can if that responsible per
son is released and another substituted

avail themselves of the plea that they never bound themselves as securities for such substituted person. If this be so I cannot perceive how it can be considered even for the least below to release such release and substitution. If such substitution would amount to an release of the securities, would not that annul the bond If further the Plaintiff would have a right to substitute an entire new bond is a very different question, which is not raised by the record before us. And I think the safer course for appellate courts is to confine themselves to decision of only such questions as arise upon the record. I think that I have demonstrated that in this case George Allen's bond as bail can only be regarded as a principal and that his release and the substitution of another person in his stead would discharge the securities to said bond. If such be the fact I can not perceive how the doctrine of the power to release securities in certain cases to render them capable of testifying, can be made applicable to the principal in a bond

Justice Bouldin not concurring in all the views taken in the opinion of the Court gave notice that he would file an opinion in this cause and leave was granted for the vacation,

16th day. Supreme Court

David Waldo Jacob Heath
and Wm McCoy
vs
Hugh M Beckwith } appeal from San
Ta Fe County

This cause having been submitted to the Court at a former day, and the Court now being fully advised in the premises deliver their opinion by Justice Benedict as follows,

This was a suit against the appellants as non residents On the 30th day of August 1851 Beckwith filed his petition in the Clerks office of the district Court for the County of Santa Fe. On the same day an attachment was issued by the Clerk to John Jones Marshal which was returned by him, levied on eight mules one waggon 3 Colts Revolver pistols one double Rifle 1 One Revolver pistol four guns two Saddles and bridles six setts of mule harness and one allens Revolver pistol

The Cause was continued from term to term until the June term 1853. at that time it appears that publication to the defendants of notice that this action was pending against them had been duly made

The record shows that at this term the defendants moved the Court to dismiss the cause for the following reasons viz 1st There is no writ 2d There is no sufficient writ 3d There is no attachment bond filed or endorsed as required by law 4th There is no sufficient bond 5th There is no affidavit filed on which

to base said suit.

which motion was by the Court overruled, afterwards on the same day the plaintiff filed an affidavit and bond each bearing date the 19th of August 1857. On the bond was the following endorsement.

The sureties and securities in the above bond are approved this 21st day of June 1853 as of August 19th 1857. R H Tompkins Clerk

The defendant afterwards filed a plea in abatement of the cause urging that, before the commencement of this suit to wit On the 20th day of June A.D. 1857. a suit was commenced and pending in the Circuit Court for the County of Jackson in the Sixth Judicial Circuit in the State of Missouri, (said Circuit Court having full power and jurisdiction to try and determine the same) in which the same identical cause of action in plaintiffs declaration mentioned is in dispute and pending between the same parties to this suit, as by the Records and proceedings of said Circuit Court will fully appear.

To this plea the plaintiff demurred and the Court sustained the demurrer. The defendants by their Attorney then filed their answer to the plaintiffs petition, in the form of the general issue in assumpsit. The issue thus formed a Jury was called and the parties went to trial and the Jury found a verdict for the plaintiff

16th day Supreme Court

in the sum of Three hundred and thirty dollars & 330,

The defendant then moved the Court to set aside the verdict and grant a mistrial also in arrest of Judgement both of which motions were overruled and the Court rendered judgement for the plaintiff for the amount of the verdict and his costs and that the property levied on under the attachment be sold to satisfy the same.

The defendants then filed their exceptions to the opinion of the Court and prayed and took this appeal to this Court

The following are the errors assigned. 1st The Court erred in overruling the motion to dismiss

2d The Court erred in admitting the Testimony of Caleb Thurman and the approval of the attachment bond and filing the original papers in the suit.

3d The Court erred in allowing the Bond and affidavit of the plaintiff below together with the writ to be filed some two terms

4th The Court erred in sustaining the demurrer to the plea in abatement

5 The Court erred in overruling the motion for a new trial

6th The Court erred in overruling the motion in arrest of Judgement

The three first errors assigned will be considered in the same connection,

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The law which authorizes and governs proceedings by attachment against the property of a debtor in the District Courts of this Territory, is contained among the general provisions of Kinney's Code, which have been reenacted by the legislature held in pursuance of the Organic act of Sept. 1850.

The 2d section of that portion of the code under the head of "attachments" provides that a creditor wishing to sue his debtor by attachment may file in the Clerks office of the District Court of any county in this Territory a petition or other lawful statement of his cause of action and shall also file an affidavit and bond and thereupon such creditor may sue out an original attachment against the lands tenements goods monies and effects and credits of the debtor in whosoever's hands they may be

The 5th Sec is as follows The Clerk shall Judge of the sufficiency of the penalty and security in the bond if they be approved he shall endorse his approval thereon and the same together with the affidavit and petition or other lawful statement of the cause of action shall be filed before an attachment shall be issued,

We need no precedent to enlighten the learned as to the meaning of these sections. They are clear and explicit that an affidavit and a bond shall be made that the Clerk shall approve the bond. That he shall

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endorse his approval thereon, and that these and the petition as other lawful statement of the cause of action shall be filed.

When these requirements complied with? &c the Record must show the facts. For beyond this the Court will not look. for evidence of proceedings in the cause below. It shows the petition to have been duly filed August 30 1851 stating the cause of action to be that the defendants were indebted to the plaintiff in the sum of $700 dollars account of Forage Hay lemn fodder and provender furnished the cattle of the defendants &c

Nearly two years after this at the June term 1853. as shown by the bond and record the bond and affidavit were filed and the approval of the bond then made and endorsed It is contended that the Court caused the approval and filing to be done at the June term nunc pro tunc. On the reasons of the provisions of Sec 34 of an act regulating practice in the District and Supreme Courts of the Territory of New Mexico approved July 17th 1851 and which reads as follows

It shall be the duty of the Clerk when any paper is filed in his office, immediately to enter on the back thereof his certificate of the day on which it was filed in the records filed in my office this — day of — 18— and sign his name as Clerk to the same. But in case he should at any time neglect to do. It may at the discretion

of the court guided by the Letter of the case be entered. Some how or some time. For Remember Shall other matters be performed some how time, when the ends of Justice shall require it.

It will not we think be urged that the acts contemplated in this section are acts which may properly "allowed" and "permitted" to be done by the Clerk or other officer of the Court, but acts to be done by the order and direction of the Court itself and when done the record must contain and show such order. Does this record in this cause show any such order? If so it is found in one of the bills of exceptions signed by the Judge though not sealed. These are the words "Plaintiff was permitted to introduce the testimony of Caleb Shuman formerly Clerk of this Court for the purpose of showing the time of the filing of the papers and the approval of the bond in this cause and also the fact of said filing and approval to be marked and endorsed when said papers and bond came to hand,

The party who excepts to the act opinions or ruling of the Court below and presents his exceptions to this Court for review in a bill must so embody his facts and points that the Court can clearly know what it is called upon to adjudicate. The bill above referred to speaks of a time of filing of the papers and approval of the bond and the filing and approval to be marked and endorsed upon said papers and bond some how time, what those papers were, is not specified and the

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Lemert will attempt to specify by inference against the plain, and unqualified showing of the Record as neither the bill of Exceptions nor the Record fixes upon any other time at which the bond and affidavit were filed other than the June term 1853. If the bond and affidavit, before the attachment issued, was delivered to the clerk and by him received to be kept on file such facts are not disclosed in the Record. From this it follows that the issuing of the writ of attachment were without authority and that all the proceedings under it were null and void. It appears that the plaintiff was permitted to introduce Caleb Shuman a former clerk to prove by him the time when the actual filing of the papers and approval of the bond to which the defendant excepted. In the 34th section of the act herein cited we do not suppose that the legislature intended to confer upon the courts an unlimited power to exercise discretion nunc pro tunc. The rule is universal that no act shall be done nunc pro tunc, which shall work injury to a party in court. If the practice is allowed of permitting a party to introduce witnesses to show that an act by the court should be done nunc pro tunc it must also permit the adverse party to introduce counter witnesses and hence must result all the rules applicable to testing the credibility of parole testimony, such as impeach

ment re, In such a conflict we are of opinion that there would be great danger of violating the rule above stated, and that the ends Justice instead of being promoted might be thwarted. In prescribing to the Courts below a rule of practice by which to obtain the facts upon which to exercise their discretion in pursuance of Sec 34, we think they should be confined to their own records, and to the officers in immediate connection of the Court In the present case the Plaintiff appeared from term to term in his case for nearly two years and if the old Clerk had neglected to perform the official acts absolutely required by Statute the Plaintiff had abundant opportunities to have learned the facts and applied in time for the correction and had the correction clearly made a part of the record in his case.

We come now to the fourth error assigned

We see no error in the Court for having sustained the demurrer to the plea in abatement. Such strictness is demanded by Courts in pleas of this sort. The plea in this case was loosely drawn and failed to aver that the Plaintiff in this cause was also the Plaintiff in the suit pleaded Besides this by reference to the Record to which the plea refers we find that the suit in Missouri was by the defendants in this cause against Beckwith. We do not see that he would be denied his right to bring a cross action against Baldo

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Neal and Neal if he should choose to do so.

On the exceptions to the opinion of the Court overruling the motion for a new trial it seems the defendants based their motion upon these grounds to wit 1st The finding formed against the Law and the evidence

2d The Court gave wrong instructions to the Jury

3d the Court refused instructions which should have been given

Plaintiff introduced witnesses on the trial who testified to his keeping during the winter of 1850 and 1851 between forty and fifty head of oxen The testimony disclosed no knowledge on the part of defendant Neal as having ever exercised control over the cattle, in living Beckwith to winter them, One witness Cummings stated that he was informed by Neal one of the defendants that he hired Plaintiff to winter his cattle that a few days afterwards he called at Plaintiff's ranch as he had cattle of his own feeding there. that he saw the cattle coming from water, and that Beckwith remained in the house while he went and saw Neal's cattle fed that they were fed by the servants of Mr Beckwith with corn and fodder that the winter was very hard and cold and that some of the cattle died That Neal came to his house about twelve miles from Beckwith's and he fed them with meal but they died, that

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he lost one or two of his cattle that year that the cattle were in a very low condition that fodder and corn were very high that year that he believed it was worth some ten or fifteen dollars a month to feed those cattle that year that the government was ~~feeding~~ herding cattle near Plaintiffs ranch and offering very high prices for corn and fodder and that at the time he saw said cattle feeding they were fed with the best kind of corn and fodder cut up together and excellently mixed that of the two cattle kept for him (the witness) in the Spring of the year one was fat enough for beef and the other in good order.

Charles Hughes another witness among other things testified that in the winter of 1850 and 51 he was living on Beckwith's ranch as a hand that 44 Afs were delivered to Beckwith by a person who then stated that they were sent there by order of Daniel Heath that they were delivered in December of that year that he fed them well with corn and fodder during the winter at morning and night, that they were in very bad condition when they arrived there and that they all died by the month of May except three that they died on an average of about three a week; that it was worth about ten or eleven dollars a head to take care of them during the winter they were there, that the winter was very hard and that there was much snow on the ground. On cross examination he stated that in the month

of February there were but 25 of said cattle the rest had died. In the month of March there were only two and in the month of April but three. That Beckett himself had sometimes at the time of the sale and sometimes after given out his branch and sometimes one of them died

Preston Beck testified that he knew by means of the firm of Waldo Hall & Co but no further, that said many of Beck was all that was given to the Jury to prove the partnership of the defendants the joint ownership or possession of the cattle or any liability for the keeping of the same or of which the firm of Waldo Hall & Co consisted. There was some other testimony but enough is here recited to enable us to see the bearing and correctness or erroneousness of the instructions of the Court to the Jury and of the refusing of the motion for a new trial. The petition avers the joint indebtedness of the defendants and describes them as trading under the name and style of Waldo Hall & Co

The Court instructed the Jury that unless the plaintiff proved that the cattle in question were the cattle of Daniel Waldo Jacob Hall and Wm H McCoy trading under the name style and firm of Waldo Hall & Co they must find for the defendants.

2d The plaintiff in this suit was bound to take as much care of the cattle as a prudent man would of his own under similar circumstances of

his men if such cattle was not taken and they died through his neglect he would not be entitled to pay.

The Court refused to give the following instruction to wit: That in order to recover in this action the plaintiff must show by ordinary care and diligence in the feeding and herding said cattle and if this proof has not been made they must find for the defts.

We think the Court very properly refused this instruction and that the old Spanish law concerning bailees as extended by counsel does not apply to bailees who during the winter undertake to keep for pay a body of wintering oxen.

We are of opinion that the second instruction given was substantially correct.

The evidence disclosed touching the property embraced in this instruction is by no means of a very satisfactory character. Of not less than ten head of oxen which started to the cane and Rearing of Plaintiff in December 1850, only three were living by the following May

Some of these cattle strayed away the distance of twelve miles to Mr Cunningham, others died themselves and they died. No witness shows that Bostwick manifested any concern at the absence of the cattle or made any effort to restore them back to his ranch. Of the fourteen head of cattle belonging to himself one or two died during the winter. The Government at that time was buying cattle near Plaintiffs Ranch and offering very high prices

for them and for others. The cause of the loss of so many of Hall's or defendants cattle is not sufficiently accounted for to relieve the plaintiff from the strong probabilities that he was guilty of gross neglect and want of care in the keeping feeding and securing of these cattle

But this is a matter upon which a jury have passed and rendered their verdict. And this Court will not disturb the verdict of a Jury upon the ground of a preponderance of the evidence being against their findings

We do not think that the first instruction was wholly correct

The Jury were told that unless the plaintiff proved that the cattle in question were the cattle of the three defendants trading under a certain name firm or style they must find for the defendants

The first portion of this instruction was equivalent to telling the jury that they must find the actual property and ownership of the cattle in the defendants. Any degree of interest by which they could have been found by the evidence jointly liable for the keeping of the cattle if kept properly would have been sufficient upon which to have based a verdict against the defendants

So a joint liability had been proven against them all or they it was of no moment to find the cattle ~~which~~ connected with and a part of their trade under the particular and arbitrary style or description of Hall Bro

The cattle might have been wholly without the company tracks, and still the defendants liable. The plaintiff in his petition adds the principle company description, it is true. Yet if a joint interest the keeping of the cattle, and a joint liability had been shown that would have been sufficient upon that point. So far from showing these facts as appears from the bill of exceptions no proof was presented to the Jury establishing any sort of partnership joint interest or liability of the defendants in the cattle or their keeping. In particular the verdict of the Jury was found not contrary to evidence or to the preponderance of evidence but absolutely without any evidence at all. Mr Beck testified that he knew by rumor of the firm of Waldo Hall & Co but no further; he does not even their state of what persons ran nor said the persons was composed of

The Judgement of the Court below must therefore be reversed, the verdict of the jury set aside and a new trial granted. From the view the Court takes of the attachment proceedings in this case as shown by the record they must be quashed.

The Question then arises how stands this cause in Court. It stands as if the plaintiff had filed his petition in an ordinary mode against the defendants, and they by their voluntary appearance had received all process and service of process and all irregularities and answered to the merits of the case

The books are full of adjudged cases in which the voluntary appearance of the defendant is held a waiver of all process of notice and cures all irregular-

ties. The same rule prevails in attachments as in other cases. 2 Ala Reports page 495 Lincoln vs Journ the Court said. The attachment is a mode by which to compel the appearance of the defendant and if he do appear and contest the validity of the claim there seems to be no reason why he should not be bound in personam by the judgement.

So in Seamans Reports 3d Vol page 60 The Court says in a suit by attachment

"That appearance is as good as personal service.

In this case defendants elected to make a full appearance and after having pleaded to the merits and contested the validity of the plaintiffs claim, they must abide the consequences of their choice and acts

We deem it unnecessary to say any thing relative to the motion in arrest of Judgement and the overruling of the same by the Court as the case must be fully disposed of on the other points presented

Judgement reversed and cause remanded to the Santa Fe District Court for a new trial.

Justice Watts dissenting in some points delivers the following opinion

Hughes

Smith on the 30th day of August 1851 filed his petition in the United States District Court for the first Judicial District against Wales Hall Rea and caused a writ of attachment to be issued and be

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levied on the property of said defendants, at the March term 1852 of said Court a notice of the pendency of the suit was ordered to be published the defendants being non residents of the County. At the June Term 1852 of said Court there was a motion made to set aside the publication of notice and dismiss the case and the motion was overruled. At the September term 1852. It appearing that publication had not been duly made the cause was continued for publication. The cause was continued at the March term 1853. on the application of Beckwith, the plaintiff in the Court below. Proof of publication as to the pendency of the suit was duly made at the June term of Court 1853. The defendants appeared and moved to dismiss the cause. the motion was overruled, The defendants then demurred to the petition. The demurrer was sustained and the plaintiff permitted to amend his Petition The defendants then filed the following plea in abatement

Hugh A Beckwith
vs
Wade Hall & co } attachment

And the said defendants come and defend the wrong and injury when &c and pray judgement of the said writ and declaration of the said plaintiff because they say that before the commencement of this suit, to wit on the thirteenth day of June in the year of our Lord one thousand eight hundred and fifty one a suit was commenced and pending in the Circuit Court for the County of Jackson in the Eighth Judicial Circuit in the State of Missouri said Court having full power and jurisdiction

directed to try and determine the issue in which the same identical cause of action in plaintiffs declaration mentioned is in dispute, and pending between the same parties to this suit as by the record and proceedings of said Circuit Court will fully appear, wherefore by reason of the pendency of said suit as aforesaid the said defendants pray judgment of said writ and declaration and that the same may be quashed.

From the Record of the Jackson Circuit Court accompanying the plea in abatement, it appears that Wade Hall & Co had instituted a suit for damages against Bethell for his non compliance with a special contract for the rendering and tanning one of hides and Bethell was defending said action by setting up the indebtedness of Wade Hall & Co to him for the keeping of said hides. To this plea in abatement the plaintiff demurred and the Court sustained the demurrer - the defendants then pleaded non assumpsit. The cause was tried by a jury at the June Term 1856 and a verdict rendered for the plaintiff for $530. The defendants moved for a new trial and in arrest of Judgement both of which motions were overruled by the Court and Judgement was rendered on the verdict. The defendants then appealed the case to this Court. There is a bill of Exceptions in the Record showing the evidence given in the trial and the instructions of the Court to the Jury. The Court below instructed Wade Hall Alderman former Clerk of the Court, to be sworn as to evidence

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papers were filed by him, and the attachment bond approved or not and on his statement of the filing of the papers and the approval of the bond by him and the time when it was done and his omission to note these facts on the papers at the time, the filing of the papers and approval of the bond was permitted to be endorsed nunc pro tunc to which the defendant excepted. The record in this case also shows that at the term of Court at which the trial took place there was opened in Court a sealed packet of depositions containing the evidence of Henry Ware Esqr and others. The Record shows no motion to suppress these depositions nor does it state whether they were read in evidence to the Jury or not. Inasmuch as the bill of exceptions does not show whether said depositions were read or not but states at its conclusion. "that this was all the evidence introduced in said cause by the plaintiff or defendant" The Court gave the Jury the following instructions 1st That unless the plaintiff proved that the cattle in question were the cattle of Daniel Waldo Jacob Hall and William McCoy trading under the name firm and style of Waldo Hall & Co the Judgment must find for the defendant

2d That the plaintiff in this suit was bound to take as much care of the cattle as a prudent man would of his own interest would take of his own, and if such care was not taken and they died through his neglect he could not be entitled to pay.

The following instruction was asked for by the defendants and refused,

That in order to recover

in this action the plaintiff must shew extraordinary care and diligence in finding and binding said cattle and if this proof has not been made the jury must find for the defendants. The appellants contend that this case must be reversed and for the reversal assign the following errors

1st The Court erred in overruling the motion to dismiss

2d In admitting the evidence of Caleb Sherman to the approval of the attachment bond and filing of the original papers in the suit.

3d In allowing the bond and affidavit of the plaintiff below to gether with the writ to be filed nunc pro tunc.

4th In sustaining the demurrer to the plea in abatement

5th In overruling the motion for a new trial.

6th In overruling the motion in arrest of Judgement. If any of these errors are existing in this Record the case must be reversed. We will first consider the refusal of the Court to dismiss the case on the motion of the defendants. It is contended that the writ in this case was defective and void and for this reason the motion to dismiss the case ought to have been sustained. A motion to dismiss the cause could only reach substantial defects in the petition for when such a motion the writ would not be before the Court and none of its defects could be noticed. If a writ is bad the Court upon a suggestion of the defect, dismiss could quash the writ, or hence the defect

to be amended, if it the error is of such a nature as can be amended. If there is a variance between the writ and petition, that variance can only be taken advantage of by plea in abatement. In the case of McKenna vs Fisk 1 Howard 241 also in the case of Peixoto vs Ravisies 11 Wheaton 280. It was decided that any mistake in the writ or variance between the writ and Count must be taken advantage of by plea in abatement. The defendant can not avail himself of this objection after pleading the general issue. In the case of Durand vs Craigetals 2 Wheaton 45. it was decided that such an exception can not even be taken advantage of upon a general demurrer to the declaration. The English Courts long since adopted a rule refusing to allow Oyer of the writ, and have thus wisely prevented many frivolous objections from being made to the hinderance and delay of justice. See 1 Tidds Pract 502. Perhaps a party in this Country in the absence of any rule of Court might be entitled to demand oyer of the writ in order to plead in abatement, but unless the Record shews that Oyer of the writ was asked and granted the defendants would have no right to take advantage of any defects which might exist in the writ. See the case of Howes vs M'Kinney 1 Ill Legal R 319. where law on this subject is fully stated and the Authorities citied. In the second place it contended that the Court erred in permitting Caleb Sherman to testify when the original bail bond was not filed and the attachment bond approved by him as Clerk and authorizing Levi Field filing and approval to be made now for then. The 34th Section of the

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Practice Act Laws of the Territory page 145 reads as follows. It shall be the duty of the clerk when any paper is filed in his office immediately to enter on the back thereof his certificate of the day on which it was filed. in the vacation. Filed in my office this day of 18 . and sign his name as clerk to the same. But in case he should at any time neglect so to do, it may at the discretion of the Court guided by the justice of the case, be entered nunc pro tunc, ~~matter performed~~ In like manner shall all other ~~matters performed~~ proceedings ~~entered~~ when the ends of justice may require it. There is a material distinction between the actual fact filing of a paper and the written evidence of its having been filed. A paper is in fact filed when it is delivered to the clerk and received by him to be kept with the papers in the cause See Bouvier Die Title "File" 2 Carters Indiana Reports 91. In the case now before us it is shown that the papers were in fact filed and the bond approved but the clerk had omitted to notice and evidence such facts as the law directed him to do It was no fault of the Plaintiff in the Court below, he had complied with the law fully as to the affidavit and bond, and the clerical error in the case it was fully competent for the Court, to correct and the purposes of Justice required such correction to be made by a nunc pro tunc entry on the record showing the date at which the papers were filed and the bond approved, The Court below committed no error in this particular but it is not shown by the

record that this omission or failure entry was ever made. If it was permitted to be made, it ought to have been made and the record ought to show the fact of its having been made but it does not show it. It is a clerical omission as must be clear by the reading of the bill of exceptions but this Court cannot supply that omission however ample the authority of the District Court may be in the premises If this is not the proper construction to put upon the 34th Section of the Practice act then that section is in effect a nullity. No person but the clerk can be expected to know whether a paper was filed with him or about approved by him or not except himself. And if it is illegal to hear his evidence and take his statements, it would be equally so to hear the evidence and take the statements of any other person. If such were the proper construction of that Section then the omission or neglect of the clerk could never be rectified by the Court and the object of the law would be wholly defeated. It was intended that the accidental omission or neglect of the clerk should not prejudice the rights of litigants and the construction which we have given is the only one calculated to promote that object.

On the fourth place it is contended that the Court erred in sustaining the demurrer to the plea in abatement. That the pendency of a former suit between the same parties for the same cause of action will abate a subsequent suit has been so repeatedly decided that no authorities need be cited to support the position as a

general rule of law. But that is not the question now before the Court in the present case. Will the pendency of a suit by attachment in the Baltimore Circuit Court for the State of Illinois instituted by the present defendants against the present plaintiff defeat a suit in the United States District Court for the District of New Mexico, instituted by the plaintiff in this suit against the defendants, whether the pendency of an attachment can in any case be pleaded in abatement is a question about which the decisions of Courts are far from being uniform. That a foreign attachment or trustee process pending [though in another State] may be pleaded in abatement was decided in the following cases

Embree vs Hanna 5 Johns 101
Eagle " Nelson 1 Pennsyl 422
Scott " Coleman 5 Litt 349

On the case of Winthrop vs Carter 8 Mass 456. Martin vs Nebby Dann 124 Brunn vs Day 9 John 221 Crawford vs Slade 9 Alabama 887 the contrary doctrine was decided and such plea in abatement held bad. On the case of Walsh vs Durfee 12 Johns 99. It was decided that the "pendency of suit in the Circuit Court of the United States in another State is not pleadable in abatement." The converse of this proposition ought to be equally true that the pendency of a suit in the Circuit Court of an other State could not be pleaded in abatement of an

a suit in the United States Circuit Court of this District. But the case of Waddington vs Bogle 3 Sumner 165, is more in point and decides of the question presented in this case than any other authority we have been able to find. In that case the Court says It is not a good plea in abatement to a suit in the Circuit Court of the United States for the recovery of land that an other action in which the present defendant is plaintiff and the present plaintiff is defendant is pending in the State Court for the recovery of the same land. If Waldo Hall & Co could sue Beckwith in the Jackson Circuit Court of the State of Missouri and then with their suit thus pending abate any suit which Beckwith might institute against them here, after such abatement of the suit here, they might dismiss their action in the Jackson Circuit Court and thus exclude Beckwith from the privilege of having his claim adjudicated upon in either Court. Whether a foreign attachment pending in another State can or cannot be pleaded in abatement of a suit in the Courts of this District under certain circumstances is a question upon which we do not wish to be considered as having intimated any opinion, but we do decide that in this particular case the plea in abatement now pleaded is bad, and the Court below committed no error in sustaining the demurrer to said plea. It is insisted upon by the appellants that the Court below erred in refusing to give the 2nd & 3rd instruction that in order to recover in this action the Plaintiff must show

extraordinary care and diligence in fencing and keeping said ~~open~~ cattle, and if this proof has not been made they must find for the defendants, On suspect of this instruction the appellants cite. Es circle page 504. Even if the paragraph thus cited is to be considered applicable to the present case, we think the instructions given by the Court sufficiently covers all the duties enjoined by the Civil law upon bailees for hire. A prudent man mindful of his own interest in the management of his own stock would be apt to comply with all the duties required of bailees in the paragraph cited from Escriche. It is also contended in this case that the Court below should have granted a new trial because there was no evidence of the partnership of the defendants or a joint interest in the cattle in trial and taken care of by the plaintiff. The partnership is fully proved by some depositions on the Record in this case but it does not appear by the bill of exceptions that said depositions were introduced in evidence on the trial, and inasmuch as the bill of ~~exceptions~~ exceptions is explicit in declaring that the evidence in said bill of exceptions contained, was all the evidence in the case upon the part of the plaintiff and defendant we are bound to consider this case without regard to the facts contained in said depositions. Matters of evidence are not necessarily a part of the record and can only be made so by a bill of exceptions stating

from the bill of exceptions, In the case of Berry vs Dale 1 Howard's 315. The court exhibited the office of a bill of exceptions as follows, "A bill of exceptions is a method of placing on the record matters which do not properly belong to it, and should contain the matters so intended to be placed upon the record" The only evidence given in this case upon the subject of the partnership of the defendants is contained in a statement of Mr Beck, that from Rumor he knew of the firm of "Wade Hall & Co" In the case of Coates vs Heed 5 Blackf 248. It was decided that the existence of a partnership could not be proved by reputation, We think that the mere statement of a witness that he knew from rumor of the existence of the firm of Wade Hall & Co. is not sufficient evidence for the Jury to infer that the defendants in the Court below were liable as partners and that the oath kept by the Plaintiff for them were partnership acts to. The finding of Jury was not sustained by the evidence and contrary to the instructions of the Court. The Court below erred in not sustaining the motion for a new trial and this cause must be reversed,

January term 1851.

Joseph Sanger
vs
Francis P Auby

} Error from Santa Fe Coun

This cause having been submitted to the Court at former day and the Court now being fully advised in the premises pronounce their opinion herein by Justice Dem ensue. as follows.

This was an action of attachment instituted by F P Auby vs Joseph Sanger in the Circuit Court of Santa Fe County on the 28th day of June A D 1849. Petition bond and affidavit were filed by plaintiff and at the October term of said Circuit Court 1849. the defendant appeared plead and put in issue the truth of the affidavit upon which the writ of attachment had been sued out upon this issue a trial was had which resulted in a verdict for plaintiff which defendant sought to set aside by his motion for a new trial which being overruled by the Court he excepted, Embodied the testimony and instructions given by the Court in a bill of exceptions prayed an appeal to the Superior Court of the District which was granted, The Judgement of the Court below upon the preliminary plea was by the Superior Court reversed and the cause remanded giving the defendant a new trial upon said plea, At the June Term of the Circuit Court for Santa Fe County 1850. an order was made changing the venue of said cause

from said Circuit Court to the Circuit Court of Rio Arriba County, afterwards said cause being so transferred appears to have been dismissed in the Rio Arriba County Circuit Court, as evidenced by affidavits made in the District Court of Rio Arriba County at the September term there of 1851. Those affidavits constituted the basis of a motion to reinstate said cause when the docket alledging that it had been improperly dismissed from the Circuit Court of Arriba County. The Court refused to reinstate said cause, but made an order directing the papers in said cause with a transcript of the proceedings in that Court to be sent to the Clerk of the Circuit Court of Santa Fe County and further adjudged that the costs of said motion and transcript be taxed against the plaintiff at the September term of the District Court of Santa Fe County 1851. The plaintiff moved the Court to have the papers in said cause filed and the case put upon its Docket which was accordingly done. Affidavit was also made that defendant was absent from the Territory an order of publication made and the case continued, at the March term of said Court 1852. Defendant appeared and moved to quash the writ of attachment which motion the Court overruled, and the cause was continued. At the next term of the Court defendant moved to set aside the order of publication, which was also overruled and the case continued. The plaintiff at the September Term 1852 moved the Court, for a Judgement against the defendant because defendant had failed to plead to the merits of said action,

January term 1854

which the Court overruled imposing terms upon the defendant to plead in a Specified time. Under this ruling of the Court defendant put in three pleas. 1st the General issue. 2d that the promissory note sued on was obtained by fraud 3d Failure of Consideration, to each of which plaintiff replied and said cause was continued. At the March term 1853 of said Court a trial was had upon the issues joined and a verdict rendered for plaintiff Thereupon defendant moved for a new trial and also in arrest of Judgement both of which two motions being overruled by the Court Exceptions were taken An appeal prayed for and granted and the cause brought to this Court for revision. On this Court ten grounds of Error are assigned the first five of which will be treated of under one head as they all relate to the trial of this cause upon the preliminary plea putting in issue the truth of the affidavit in the Circuit Court, and before this cause was ever taken by appeal to the Supreme Court established under the Kenney Code.

Of the District Courts established under the organic law, recognizing the Circuit Courts deriving their existence under the Kenney Code. They were equally bound to recognize the decisions of the Supreme Court created by the same Authority. This Supreme Court did revise and reverse the Judgement of the Circuit Court upon the preliminary plea remanding said cause &c.

to the Circuit Court of Scioto the County granting a new trial to defendant upon said plea. The cause by virtue of this mandate stood as if such issue had never been tried. The fact of this case being transferred from the Circuit Court in to the District Court did not change its condition. It was error in the District Court below not to allow the defendant a trial upon this preliminary plea and for this reason the case must be reversed. It is true that appeals are not often allowed from interlocatory judgements, but it is not the province of inferior tribunals to exercise appellate powers on the decisions of superior courts. There are five other grounds of error assigned which involve the construction to be given to what is called the transfer act passed by the Territorial Legislature approved 14th July 1851 We do not conceive it important as it is understood by the Court that there are now any cases pending in the Courts of the Territory which fall under the provisions to construe it. Had not the defendant appeared after publication made in the District Court the question of the legality of the transfer of this case from the Circuit Court to the District Court would have been fully discussed. But his appearance ere this cures irregularities may have occured. By virtue of his appearance in the District Court obtained Jurisdiction over the case, but it was bound to receive it just as it stood in the Circuit Court. In the Circuit Court it stood for trial on the preliminary plea, but

ting in issue the truth of the affidavit that there has been been and the defendant is entitled to his trial on that before he shall be, compelled to plead to the merits.

Justice Nash dissenting in some points delivers the following opinion

On the 28th day of June 1849 Autry sued out an attachment against the goods of Dangle for a debt of $ 2229.14 alleged to be due and owing him. The petition and bond required by law was also filed by him in the Circuit Court for Santa Fe County Dangle appeared to the attachment at the October term 1849 of said Court and filed the following plea

Dangle
vs } In the Santa Fe Circuit ct
Autry } October term 1849

Defendant comes and denies that at the time of making of the affidavit by the plff, he was was about fraudulently to convey or dispose of his property or effects so as to delay or hinder or defraud his creditors in manner or form as in the said affidavit alleged and of this &c

Atty for deft

This plea was thereupon ruled to the 16th Section of the attachment law, Laws of the Territory page 41 which reads as follows

"In all cases when property and effects, shall be attached the defendant may at the court to which the writ is returnable put in his

answer without each denying the truth of any material, but contained in the affidavit to which the plaintiff may reply, a trial of the truth of the affidavit shall be had at the same term and on such trial the plaintiff shall be held to prove the existence of the facts set forth in the affidavit as the ground of the attachment, and if the issue shall be found for him the cause shall proceed, but if it be found for the defendant the cause shall be dismissed at the costs of the plaintiff." The issue thus made upon the truth of the affidavit was then tried by a jury and found for the plaintiff. A Motion for a new trial was made and overruled and the defendant then appealed the case to the Supreme Court. At the March term 1853 of the Supreme Court of the Territory of New Mexico, that Court reversed the decision of the Circuit Court and sent the case back for a new trial on this plea in many issue. The case then came before the Circuit Court again for trial at the August term 1853, and thereupon Dangle applied for a change of venue. It was granted to him and the cause sent to the Circuit Court of Rio Arriba County. It is unnecessary to refer to the proceedings which took place in the Rio Arriba Court for the reason that there being no law authorizing a change of venue, the proceedings of that Court were absolutely void and could not prejudice the rights of the plaintiff Aubry, and no matter how many errors may have been commit-

ted by that Court, the defendant can not avail himself of them, for it is a settled principle of law that no person can be permitted to take advantage of his own wrong. If this view of the case is not correct, still in as much as the defendant in the Rio Arriba District Court did not take any exception to the decision of that Court he can not now avail himself of any errors, which that Court may have committed in the case. The defendant subsequently appeared to the suit in the United States District Court for the first District plead to the merits of the action and cannot now assign for error, matters which could only be reached by a plea to the Jurisdiction of the Court or the plea of "Res Adjudicata".

After the passage of the organic Law and the institution of the territorial government under it, a motion was made to place this cause on the docket of the United States District Court for the County of Rio Arriba at the September term 1851. This motion was overruled and the Court finding the papers of suit in the Clerks office of his Court which properly belonged to the office of the Clerk of the Circuit Court for Santa Fe County directed the papers to be sent there. At the September term 1851 on motion of the plaintiff the papers in the above cause were filed in the United States District Court for the 1st Dis-

trict Santa Fe County and the cause docket-
ed in said Court. The plaintiff Autry
having made affidavit of the non resi-
dence of Sangle an order of publication
was made and the cause continued.
At the March term 1852, the defendant
Sangle appeared and on his motion
the cause was continued until the
next term of the Court. At the June
term 1852, on the application of Sangle
the cause was again continued. The
Cause was tried at the September Term
1852 of the District Court upon issues
arising out of three pleas filed by the
defendant. 1st. Non assumsit 2d Fraud
in obtaining the note sued on, 3d Want
of Consideration. On the trial of these
issues by a jury a verdict was ren-
dered in favor of the plaintiff and
a Judgement on the verdict for $4683,
51. cents, and for costs was given for the
plaintiff. For the purpose of reversing
this judgement the defendant Sangle
appealed the cause to this Court. Ma-
ny points have been made in this
case and much argument bestowed
upon questions, which the Court do not
deem it essential to notice at any
length.

It has already been decided in
effect by the Supreme Court of this Ter-
ritory, that the Legislative Assembly
of this Territory under the 9 Section of
the Organic Law had power to remove
the causes pending in the District
Courts of the Territory to the United States
District Courts and that such removal
was intended to be accomplished by the
2d Section of the Act of 14 July 1851. which

is as follows. That all suits and process that have remained in sd shall be carried to a final decision in the Courts established by the Legislative assembly to the same effect as they would have been in the Courts previously existing." See laws of the Territory Page 174.

We think that the spirit and intent of this Statute means that causes pending in the Circuit Courts of the Territory should be transferred to the United States District Courts, and there docketed and proceed in the same as though they had originated in said Court. Any other view of the spirit and intent of this law would defeat the obvious purposes of the Legislative assembly in its enactment. It is by this contended by the appellant that the Courts established here and the Civil Government put into operation by him ceased at the moment when the treaty of Guadalupe Hidalgo was concluded between the United States and the Republic of Mexico. This treaty was concluded 2 Feb 1848 and by that treaty sovereignty and jurisdiction over the territory of New Mexico was granted with by the Republic Mexico and acquired by the Government of the United States. The Congress of the United States did not pass an Organic law for this territory until 9 Sept 1850 Law if the Civil Government put in operation here by Gen Kearney ceased to be effective at the conclusion of hence what sys-

tem of law and government prevailed in this Territory from 2d February 1848 until 9 Sept 1850. The Republic of Mexico could not furnish nor carry on a system of government here after the treaty for her sovereignty was alienated by her and acquired by the United States, Nor if Congress after the treaty did not choose to provide any other system of Government for the territory of New Mexico the government existing at the date of the treaty would continue until it was changed by the people of this Territory or by Congress. Congress did not change it until 9 Sept 1850, nor did the people of this Territory change it. It is evident then that the government put into operation during the war by Gen Kearney continued as a valid system of government until it was superseded by the Organic law of Congress and the Territorial Government established under it. It is contended that Texas extended her laws over this Territory and claimed to exercise Supreme Authority here. This territory was purchased by the United States of the Republic of Mexico. The title to this Territory and Sovereign power over it existed in the Congress of the United States and not in the State of Texas and the extension of her laws by Texas over this Territory could have no more effect when the System of Government existing here or the rights of the people of this Territory than if she had extended them over the State of New York or Mississippi On the appearance of this case in

the United States District Court for the County of Santa Fe. It was the duty of that Court to proceed with the cause in the condition in which it found it. The Supreme Court having reversed the decision of the Circuit Court upon the trial of the preliminary issue. the case when presented in the United States District Court for this District stood for trial again on that issue. It was the duty of the said District Court to proceed with the case as it found it. There being no law authorizing the United States District Court for this District to review over rule or set aside a court of Errors upon the decisions of the Supreme Court under Kearny's Code. It was a matter of no consequence whether an appeal could be taken from a verdict on the preliminary issue or not. The appeal was granted and was sustained by the Supreme Court of the Territory and should have been respected and enforced by this District Court in the then unfinished condition of the case. It thus appears by the Record that there is now standing on the Record a good issue on the truth of the affidavit, which issue is ready to be tried never has been tried and must be disposed of before by law the cause can be further proceeded in. The United States District Court permitted the parties to try this case upon the merits without having

bist dis kind of that issue. This was upon the trial of the preliminary issue in the Circuit Court in the first instance the following instruction was given to said jury, to wit: "That in making up their verdict they must determine from the evidence whether or not any fact has been proven by the testimony upon which the plaintiff could have a well founded belief that the defendant was about fraudulently to dispose of his property to defraud hinder or delay his creditors". The issue to be tried by the Jury was whether Sangle was or was not about fraudulently to dispose of his property or effects so as to hinder delay or defraud his creditors. The belief of Autry whether well founded or not upon that subject was not the issue before the Jury for determination. The instruction of the Court was erroneous and calculated to mislead the Jury to the prejudice of the defendant in the Court below. The jury should have been instructed to weigh and consider all the evidence given upon the trial on both sides of the case and if satisfied from that evidence that the defendant Sangle was about fraudulently to convey or assign, conceal or dispose of his property or effects so as to hinder delay or defraud his creditors they should find for the plaintiff and if not so satisfied they should find for the defendant

The many other points of error made and argued by the appellant cannot be considered now of sufficient impor-

tance for plaintiff to require any notice at present from the Court. Judgement reversed for the errors above mentioned.

Daniel Naddo Jacob Hall and William McCoy
vs
Hugh M Beckwith } Appeal from the ~~District~~ Court for the First Judicial District and County of Santa Fe.

This cause having been fully heard and considered by the Court.

It is ordered and adjudged, that the attachment proceedings in the Court below be quashed and the Judgement of the Court reversed. the verdict of the Jury set aside and the cause remanded to the Santa Fe District Court for new trial as in an ordinary suit by petition; And that the appellants recover of the appellee their costs in this Court in this behalf expended and that they have execution therefor

Joseph Stamps
vs
Francis P Aubry } Appeal from the District Court for Santa Fe County.

This cause came on to be heard on a transcript of the Record from the United States District Court

January Term 1854.

for the first Judicial District in the Territory of New Mexico from the County of Santa Fe, and was argued by Counsel, On consideration whereof it is now here ordered adjudged and decreed by this Court that the Judgement of the said District Court in this case be and the same is hereby reversed at the costs of the Appellee and that this cause be and the same is hereby remanded to said Court for further proceedings herein in conformity with the opinion of this Court,

James M Ward
vs
James M Broadwell } Replevin
} Appeal from
Santa Fe County

This cause came on to be heard on a transcript of the Record from the United States District Court for the First Judicial District in the Territory of New Mexico from the County of Santa Fe and was argued by Counsel, on Consideration whereof, It is now here ordered adjudged and decreed, by this Court, that the Judgement of the said District Court in this cause be and the same is hereby reversed at the costs of said Appellee. And that this Cause be and the same is hereby remanded to said District Court to award the Appellant a new trial without costs in conformity with the opinion of the Court,

It is ordered that ~~Hunter~~ Sibley ~~Fauntleroy~~ be allowed to Joseph Sire for seventeen days attendance on Court at the

January Term 1854.

It is ordered that Court adjourn until Tuesday next at 9 o'clock P.M.

J. J. Davenport
Chief Justice
John S. Watts
Asso Justice

Kirby Benedict
Associate Justice

Tuesday 24th July
Court met pursuant to adjournment.

The minutes not being ready
It is ordered that Court adjourn until to morrow at 9 o'clock P.M.

John S. Watts
Asso. Justice

Wednesday 26th July 8th
Court met pursuant to adjournment Present Das & Benedict Chief Justice and the Hon Jno S Watts and Kirby Benedict associate Justices

The minutes of the proceedings on the 6th 7th and 8th days of February are read approved and Signed.

It is ordered that the Term

January Term 1854

of thirty dollars be allowed to Joseph Sicon for 18 days attendance on Court at $2 per day as bailiff

It is ordered that thirty dollars be allowed to Hartford Lovelace for 15 days attendance upon Court at $2.00 per day as bailiff.

It ordered that the sum of Ninety dollars be allowed to Charles Blummer Marshall for 18 days attendance upon Court at $5 00 per diem and thirty Dfs 37/100 dollars for bad lists & stationary &c furnished under the order of the Court &c examined and allowed in bills as follows Simon Delgado $1,50 cts Preston Beck $2 4,37 Alsberry Hubbard $4,25 Wood and Candles furnished by Relf $7.25

It is ordered that Ninety dollars be allowed L L Shutz Clerk of this Court for 18 days attendance upon Court at $5.00 per day

It is ordered that Court adjourn until Court in course

J H Davenport
Chief Justice

John L Watts
Ass. Justice,

Hiram Bennett
Associate Justice

dollars per day as bailiff

It is ordered that twenty eight dollars be allowed to Hartford Cook for fourteen days attendance on Court at two dollars per day as bailiff

It is ordered that the sum of Eighty dollars be allowed to Lewis Schultz Clerk of this Court for Sixteen days attendance upon the same at five dollars per diem

It is ordered that the sum of thirty five 87/100 dollars be allowed to Charles Blummer Marshall for stationary fuel & carpeting furnished by order of the Court, Examined and allowed on bills as follows

Bill of Simon Delgado		$ 0.50
" " Messrs Webb		4.25
" " Preston Beck		24.37
Wood furnished by said Marshall		1.75
		$35.87

It is ~~ordered~~ that Court now adjourn until the next regular term

It is ordered that Eighty dollars be allowed to Charles Blummer Marshall of this County for Sixteen days attendance upon Court at five dollars per diem

It is ordered that Court now adjourn until ~~the next regular term~~,

January 1st, 1855.

At a term of the Supreme Court of the Territory of New Mexico begun and held at the Court House in the City of Santa Fe, on Monday the first day of January AD 1855 Present the Hon James H Woodward Chief Justice of said Court and the Hon Perry E Brocchus and the Hon Kirby Benedict Associate Justices Charles Blummer U S Marshal and Louis D Shultz Clerk

The Court appointed Charles P Clever Crier for the present term who appeared, and was duly sworn as such,

The Marshal appointed Jesus Ma Baca bailiff for the present term who appeared and was duly sworn as such

On the motion of Mr Smith, Wm Claude Jones Esq is duly sworn as an attorney of this Court and thereupon it is ordered that the said William Claude Jones be admitted to practice as an attorney and Counsellor at Law and Solicitor in Chancery in this Court,

On the motion of Mr Ashurst, Messrs James H Reed and Sidney Mitchell are duly sworn as attornies of this Court, and thereupon it is ordered that the said James H Reed and Sidney Mitchell be admitted to practice as attornies and Counsellors at Law and Solicitors of Chancery in this Court,

On the motion of Mr Jones, Messrs

Ashurst, Smith, Wheaton and Jones are appointed as Commissioners to draft and report to this Court, Rules for the Government of the practice of the Supreme and District Courts in this Territory;

Justo Pino & Gertrudes Rascon his wife and Manuel D. Pino & Josefa Ortiz his wife

1 vs } Appeal from the Co. by of Santa Fe

Alexander Wateh

Now come the appellants by their attorney Mr Smith and file their assignments of Errors and the defendant by his attorneys Messrs Ashurst and Hall and join therein,

The Territory

2 vs } Appeal from San Miguel Co.

Marcelino Seballes

Now comes the plaintiff by the Attorney General Mr Wheaton and files an assignment of Errors in this cause and the defendant by his attorneys Messrs Ashurst and Hall and joins therein,

Vicente Montes

3 vs } Appeal from the County of Rio Arriba

Benito Montes

Now comes the appellant by Mr Wheaton his attorney and files an assignment of Errors in this cause and the appellee by his attorney Mr [illegible] and enters their agreement, It is ordered that this cause be continued

to the next term of this Court,

Whereupon Court adjourned to
10 O'Clock A.M. on Wednesday next.

Mr Wm Claude Jones appeared in Open
Court and presented his commission as
District Attorney for this Territory,

Whereupon, Court adjourn
ed to 10 O Clock A.M. on Wednesday next

J. A. Davenport

Kirby Benedict

Jesse E. Dee Acting Sec.

January 3d 1855

Court met pursuant to adjournment
Present as of Monday last.

The minutes of mondays proceedings are now read corrected and signed by the Judges.

Elias Spiegelberg a free white person an alien and a native of Prussia this day appeared in Open Court, and made declaration and proof required, by the laws of the United States, of Aliens who have resided in these States three years next preceding their arrival at the age of twenty one years, for the purpose of obtaining the benefit of the Laws of the United States, relating to Naturalization and thereupon the said Elias Spiegelberg in Open Court here, made Solemn oath, to support the Constitution of the United States and to renounce and abjure forever all allegiance and fidelity to every foreign Prince Potentate State or Sovereignty whatsoever, and particularly to Frederic William IV King of Prussia whose subject he was,

Whereupon It is Ordered that a certificate of Naturalization be issued to him upon his paying the costs of this application

Jesus Ma Manuel Gérie
Apolonius Navarro & Jesus
Ortiz their views

$ .25

Alexander Marsh

Issued from the County of Santa Fe

This record is not co...

on the part of the appellants by Mr Smith, and by Mr Ashwell on the part of the appellee, and Mr Ashwell not having concluded the further hearing of the same is postponed until to morrow morning,

Whereupon Court adjourned to 9 O'Clock a.m. to morrow,

J D Davenport

Kirby Benedict

Petty & Broaddus.

January 4th 1855

Court met pursuant to adjournment.
Present as of yesterday.

The minutes of yesterday are read approved and signed by the judge

Justo de Manuel Pino
& Geitrudes Ravear & Josefa
Ortiz - their wives
vs
Alexander Mater
} Appeal from the County of Santa Fe

The argument of this cause on the part of the Appellee is concluded by Mr Ashurst, and the further hearing of the cause is postponed until to morrow

Thereupon Court adjourned to 9 O'Clock A.M. to morrow.

J. H. Davenport
Kirby Benedict,
Judges of the Probate Court

January 5th 1855.

Court met pursuant to adjournment
Present as of Yesterday.

The minutes of Yesterday's proceedings are now read approved and signed by the Judges.

Justo Pino & Manuel D Pino
& Gertrudes Mason & Josefa
Ortiz Their wives,
1 D vs Appeal from the County of Santa Fé.
Alexander Hatch.

The argument in this cause is continued on the part of the appellants by Mr Smith, and he not having concluded his remarks the further hearing of the cause is deferred until to morrow.

Whereupon the Court adjourned til 11 O'Clock A. M. to morrow.

J. S. Newcomb
Kirby Benedict
Perry E. Brocchus

January 6th 1855.

Court met pursuant to adjournment
Present as of Yesterday.

The minutes of Yesterday are now
read approved and Signed by the Judges

Justo & Manuel D Pino
& Gertrudes Rascon & Josefa
Ortiz their wives.
vs } Appeal from the County of Santa Fe
Alexander Welch,

The Argument of this
cause is continued on the part of the appellants by Mr Smith and he not having
concluded, the further hearing of the same
is postponed until Tuesday next.

Whereupon the Court adjourned
to Tuesday next at 10 O'Clock A. M.

J. D. Davenport
Kirby Benedict
Jesus S. Chaves

January 9th 1853.

Court met pursuant to adjournment, Present as on the 6th inst.

The minutes of the 6th inst are now read approved and signed by the Judges

Justo. v. Manuel D Pino
& Gertrudes Ravem v. Josefa
Ortiz their wives

vs } Appeal from the County of Santa Fe

Alexander Hatch

The argument of this cause is now concluded by Mr Smith and the cause is taken under advisement by the Court.

Whereupon the Court adjourned to 10 O'clock A.M. to morrow.

J J Davenport,
Kirby Benedict
Perry E. Brocchus

January 10th 1855.

Court met pursuant to adjournment Present as of Yesterday.

The minutes of yesterday were read approved and signed by the Judges.

The Territory of New Mexico
vs. } Appeal from the County Court Mora
Marcelino Sebalos

This day the parties appeared by their Attorneys, and the cause is argued by the Attorney General Mr Wheaton on the part of the Appellant and Mr Ashurst the counsel for the Appellee being unwell at his request the further hearing of the cause is postponed until to morrow,

Whereupon the Court adjourned To 10 O'Clock a m to morrow,

J. J. Davenport.

Kirby Benedict

Jesus M. Baca

January 18th 1853.

Court met pursuant to adjournment. Present as of yesterday.

The minutes of yesterday are now read approved and signed by the Judges.

The Territory of New Mexico
vs Appeal from the County of San Miguel
Marcellino Ceballos

This cause is now Argued on the part of the appellee by Mr Ashurst and the Argument on the part of the appellant is concluded by Mr. Wheaton the Attorney General, and the cause is taken under advisement by the Court.

Whereupon the Court adjourned until Saturday morning at 10 O'Clock.

J. S. Davenport

Kirby Benedict

Jesus L. Baca

January 13th 1855

Court met pursuant to adjournment
Present as on the 11th inst.

The minutes of the 11th inst were read approved and signed by the Judges

The Committee appointed to Report Rules for the government of the practice of this Court and the District Courts state that they had prepared a number but could not present their report to day.

Whereupon Court adjourned to 10 O'Clock A M on Saturday next.

Mr Wm Clarke presented a motion to pay the costs of such suits as had been recently instituted in the name of the United States against the Territory

Whereupon the Court adjourned to 10 O'Clock A M on Saturday next

J. D. Davenport

Kirby Benedict

Geo L. Brocchus

January 20th 1855

Court met pursuant to adjournment Present as on the 13th inst.

The minutes of the 13th inst were read corrected and signed by the judges,

Whereupon Court adjourned till 11 O Clock am of monday next,

J F Davenport

Kirby Benedict

Percy E. Breeden

January 29th 1853.

Court met pursuant to adjournment
Present as on the 28th

The minutes of the 28th are now read approved and signed

On the motion of Mr Simpkins Spruce M Baird Esq is now duly sworn in as a member of the bar of this Court.

It is Ordered that the Clerk be required to search for the Records of the former Supreme Court of this Territory if there be any in Existence, and produce them before the Court on Wednesday next.

Whereupon Court adjourned till 11 Oclock A.M. on Wednesday next,

J J Dearmont

Hiley Benedict

Perry E. Brocchus

January 31st 1855

Court met pursuant to adjournment
Present as on the 29th instant

The minutes of the 29th instant are
now read approved and signed by the Judges.

It is ordered that an account of Charles
H Merritt against the Territory for services
rendered as Sheriff of the County of Santa Fe
in the Supreme Court of said Territory be allow
ed for fifteen 50/100 dollars,

It is Ordered that Wm Claude Jones
United States District Attorney for this Terri
tory be allowed the sum of One hundred
and ninety dollars for 300 miles travel in
coming from his residence to Court. 300 miles
travel in returning and 26 days attendance
on Court,

It is Ordered J C Sabine Clerk be allowed
the sum of Ten 50/100 dollars, for one record book
for the use of this Court,

Whereupon Court adjourned till
Clock on monday morning next.

J J Davenport
Kirby Benedict
Percy E. Bacon.

February 5th 1855.

Court met pursuant to adjournment
Present as on the 31st of January.

The minutes of January 31st are now
read approved and signed by the
Judges,

Territory
vs } appeal from San Miguel Cty
Marcellino Sebalos

This cause having been
submitted to the Court at a former day
and the Court being now fully advised
in the premises deliver their Opinion
in writing (Recorded in Opinion Book
I pages) by Chief Justice
Deavenport, Justice Brocchus dissenting
dissenting delivered an Opinion, Recorded
in Opinion Book I page

Justo & Manuel D Pino
& Gertrudis Ravem and
Josefa Ortiz. their wives
vs } appeal from the County of Santa Fe
Alexander Hatch

This cause having
been submitted to the Court at a former
day and the Court being now fully
advised in the premises deliver their
Opinion therein by Justice Benedict
(Recorded in Opinion Book I page
Justice Brocchus dissenting
in some points delivers a seperate Opin-
ion therein Recorded in Opinion Book I
page

The Territory
vs } appeal from San Miguel County
Marcellino Sebalios

This cause came on to be heard upon the joinder of errors herein and the Court having heard the argument of counsel and being now fully advised in the premises. It is Ordered adjudged and decreed that the judgement of the District Court herein be affirmed, and that the defendant Sebalios be discharged, and that the costs be taxed against the Territory

Justo and Manuel D Pino
and Gertrudes Ravenand
Josefa Ortiz di Armijes
vs } appeal from Santa Fe County
Alexander Hatch

This cause came on to be heard upon the transcript of the Record from the first Judicial District Court of the Territory of New Mexico, and was argued by Counsel on consideration whereof It is Ordered adjudged and decreed, that the judgement of said District Court herein be and the same is hereby reversed, and that the same is hereby remanded to said Court to be tried de novo, and that the respellants recover of the respellee the costs of this appeal

Wherein, on hour, adjourned to 3 O'Clock P. M. this evening.

J J Davenport

Kirby Benedict,

Perry E. Brocchus.

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February 6th 1855

Court met pursuant to adjournment
Present as of Yesterday

The minutes of yesterday are read
approved and signed by the Judges

It is Ordered that Charles Blumen
Atty Marshal be allowed the sum of
Seventy dollars for fourteen days attendance
on said Court

It is Ordered that Lewis D Shute
the Clerk of this Court be allowed the
sum of One hundred and seventeen
50/100 dollars for engraving the Seal of
this Court under a special order, and
that he be allowed the further sum of
seventy dollars for fourteen days attendance
on this Court

It is ordered that Charles Allen
be allowed the sum of twenty eight dollars
for fourteen days attendance on
Court as Crier

It is Ordered that Severn Ma
Bacon be allowed the sum of twenty
eight dollars for fourteen days attendance
on Court, as bailiff,

It is Ordered that Charles Blumen
Atty Marshal be allowed the sum
of nineteen 13/100 dollars for fuel lights
and Stationery furnished for the use
of this Court,

It is ordered that a Jurist of Justice
Benedict, with explanations of the Statute by
the Court, on the subject of the payment

of Jesus Ma Baca the bailiff for this Term
be filed,

Whereupon Court adjourned To 4 O'
Clock on Tomorrow afternoon,

J. Ahlquist

Hilario Benavidez

Jerry E. Brocchus

February 7th. 1850

Court met pursuant to adjournment present as yesterday

The minutes of yesterday were read approved and signed by the Judges

It is ordered that the Marshal be allowed five dollars for one additional days attendance on Court

It is ordered that Lewis Sibley be allowed five dollars for one additional days attendance on Court as Clerk

It is ordered that Charles Pleasonton be allowed two dollars for one additional days attendance on Court as Bailiff

It is ordered that the Commissioners appointed to draft rules for the regulation of the practice in this Court for the District Court be discharged from further consideration of the subject the rules reported by them not being satisfactory

It is ordered that James Mc Breen be allowed eighteen dollars for 12 days attendance on Court as Stenographer, to be paid by the Sheriff

~~It is ordered that the Marshal pay the defendant money paid to the Clerk of this Court on yesterday and to pay expenses to the witnesses and report forthwith to the Court~~

Whereupon Court adjourned to Court in course,

J. H. Davenport

Kirby Benedict

Percy E. Brockus

January term 1856.

At a term of the Supreme Court of the Territory of New Mexico begun and held at the Courthouse in the City of Santafe on the first Monday of January A D 1856

Present

The Hon. James H. Deavenport Chief Justice of said Court and the Hon. Kirby Benedict associate Justice Charles Blumner U.S. Marshall and Augustus De Marle Clerk

The Marshall appointed Jesus Ma Baca Bailiff for the present term, who appeared and was duly sworn as such.

1 Manuela Antonia Chaby vs. In chancery William S. McKnight } Appeal from Santa Fe County

By agreement of the Counsel the assignment of Errors in this cause is to be filed by morrow.

2 José de la Cruz Romero vs. Appeal from Santa Fe County
Mariana Taramillo

Now comes the appellant by H. N. Smith his attorney and files his Assignment of Errors in this cause and time is given for the filing of the joinder in Errors hereon

Allen

January term 1856.

Allen K. Donaldson

3 vs Appeal from San Miguel County

County of San Miguel

Now comes the appellant by Kingston & Watts his attorney and files in Court the assignment of Errors in this case and time is given for the filing of the joinder in Errors herein.

Francisco Silva

4 vs Debt.

Francisco Romero } Appeal from Santa Fe County

& Juan Benavides

Now comes the appellant by M. Atkinson his attorney and files in Court the assignment of Errors in this cause and time is given for the filing of the joinder in Errors herein.

It is ordered by the Court that the appointment of Augustus Dedlanta as Clerk of the Supreme Court with his bond and oath of office be spread upon the record and the same are in these words to wit,

The Office of Clerk of the Supreme Court of the Territory of New Mexico being vacant, we the undersigned hereby appoint Augustus De Mantia to fill said vacancy.

Santa Fe August 23d 1855

D. D. Leaven Worth

Chief Justice of Said Court

Perry E. Brocchus

Associate Justice etc

Given

January Term 1856

Know all men by these presents that I Augustus De Marle as principal and Joseph Friend and Edward Inba as securities are held and firmly bound unto the United States in the penal sum of two thousand Dollars, for the payment of which we bind ourselves our heirs executors and administrators by these presents sealed with our seals and dated this 23d day of August A D 1855.

The condition of the above obligation is such, that whereas the above named Augustus De Marle has been appointed Clerk of the Supreme Court of the Territory of New Mexico now if the said Aug. De Marle shall faithfully discharge the Duties of his said Office then this obligation to be void, otherwise to remain in full force and effect

Augustus De Marle
Edward Inba
Joseph Friend

Taken and approved by me the day and year above written
I. D. Graves Jr
Chief Justice of Utah

I Augustus De Marle, Clerk of the Supreme Court of the United States of the Territory of New Mexico do solemnly swear that I will truly and faithfully record and enter all the orders, decrees and judgements and other proceedings of said Court and transcribe faithfully and impartially

&c.

discharge and perform all the Duties
of my said office according to the
best of my abilities and understanding.

Augustus De Mark

Sworn to and subscribed before
me this 23d day of August 1855
J. D. Davenport
Chief Justice of Vancouver

Whereupon Court adjourned to
11 O'Clock to-morrow morning.

Motion made

The application contained in the
Bond given by Mr. De Mark as
Clerk of the Supreme Court
is approved by this Court.

J. D. Davenport

January Term 1856.

January 8th 1856

Court met pursuant to adjournment. Present as of yesterday.

The minutes of yesterday are now read, approved and signed by the Judges.

Marcueta Ant. Isabey
vs
Wm. S. M.Knight et al

Now comes the appellant by Watts & Ashmost his attorney and files in Court the assignment of Errors in this case.

Waldo Hall & Co.
vs
H M. Beckwith

Now comes the appellant by Wheaton his attorney and files in Court a motion for amended transcript

Vicente Maestas
vs
Benito Maestas

Now comes the appellee and files a joinder of Error in this case.

Whereupon Court adjourned until 11 O Clock A.M. to morrow morning

P. H. Seamonds

Kirby Benedict

January term 1856.

January 9th 1856.

Court met pursuant to adjournment.
Present as of yesterday

The minutes of yesterday are now read, approved and signed by the Judges.

2 Jose de la Cruz Romero
vs
Mariana Paramillo

Now comes Mr M. Johnson for the appellee and files and files a joinder of Error in this case.

1 William S. M'Knight
vs
Manuela Ant. Chabez

Now comes Mr H. N. Davis & Tompkins for the appellee and files a joinder of Error in this case.

3 Allen L. Gonaldson
vs
County of Sacramento

Now comes the Attorney for the appellee and files a joinder of Error in this case.

Wade Hall & Co.
vs
Hugh M. Berreith.

Now comes the appellant by Wheaton his Attorney and files an affidavit to his motion for amended record, and the motion being argued by counsel the Court take it under advisement.

January Term 1856.

Catalina Bustamante }
Habeas Corpus Case }

Now comes Mr M. Asburn for appellee and files a motion to dismiss this cause.

6 Victor de la O }
vs
Pueblo of Acoma }

Now comes Mr. H. M. Smith for appellee and files a motion to dismiss this cause.

Keigh et al. Beckwith }
vs
Waldo Hall & Co }

Now comes Mr. H. M. Smith & Asburn for appellee and file a motion to dismiss this case.

7 Pueblo of Acoma }
vs
Pueblo of Laguna }

Now come Mr Smith & Dempkins and for appellee and file a motion to dismiss this cause.

Whereupon Court adjourned until 11 O Clock to-morrow morning.

H. H. Laumbach

Kirby Benedict

January Term 1856.

January 10th 1856.

Court met pursuant to adjournment.
Present as of yesterday.

The minutes of yesterday are now read approved and signed by the Judges.

Waldo Hall & Co
vs.
Hugh M. Beckwith

The motion of Mr. Wheaton in the above case ~~[illegible]~~ for leave the transcript is hereby granted by the Court

John S. Watts
vs
County of Santa Fe

Now comes Mr. Wheaton for Appellee and files a motion to dismiss this case.

Whereupon Court adjourned until Monday the 21st of this month at 11 Oclock in the morning.

J. H. Davenport

Kirby Benedict

January term 1856.

January 21st 1856.

Court met pursuant to adjournment.
Present as on the 10th inst January.

The minutes of the 11th inst January are now read, approved and signed by the Judges.

Nicolas Quintana May Alarid an alien and native of Mexico a free white person this day came into open Court and proved to the Satisfaction of the Court that he made two years ago the requisite declaration of his intention to become a citizen of the United States, that he has resided in the United States for five years last past, that he has resided one year last past in the Territory of New Mexico and that during all that time he has behaved as a man of good moral character, attached to the Principles of the Constitution of the United States and well disposed to the good order and happiness of the same. And thereupon the said Nicolas Quintana y Alarid in open Court here made Solemn oath, that he will support the Constitution of the United States and that he does absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign Prince, Potentate, State or Sovereignty and particularly all allegiance and fidelity to the United States of Mexico, whose subject he was. Whereupon it is ordered by the Court that a certificate of naturalization be issued to him on payment of the costs of this application.

January term 1856.

It is ordered by the Court that all the cases now on Docket in this Court will be continued to the next term of this Court, there being no jury term at present.

Whereupon Court adjourned until to-morrow at 10 O'Clock A.M.

J. J. Davenport

Kirby Bennett

January term 1856

January 22d 1856.

Court met pursuant to adjournment
Present as of yesterday.

The minutes of yesterday were now read, approved and signed by the Judges.

It is ordered that Augustus DeMark the Clerk of this Court be allowed the sum of thirty dollars for six days attendance on this Court

It is ordered that Reuben McBain be allowed the sum of twelve dollars for 6 days attendance as Bailiff on this Court at $2.00 per day:

It is ordered by the Court that John Ward be allowed the sum of $5.06 for 19 loads of wood; viz: 5 loads at 2½ bbs and 2 loads at 2 bbs for the Courthouse during the Session of the Supreme Court and 12 loads at 2 bbs for the Judges of the Territorial Library for 16 days and 38 cents for one doz. Axe pens.

It is ordered by the Court that Charles L Bennett be allowed the sum of thirty dollars for 6 days attendance as W. Marshall on this Supreme Court at 5 dollars pr day.

It is further ordered that Charles Bennett be allowed the sum of thirty Dollars for hire of Clerk, to assist him in his official business as U.S. Marshall for the period of 6 days

from

from June 30, to December 31, 1855 and the sum of twenty five dollars for the necessary Office Expenses of the said Marshals for the same period of six months from June 30 to December 31, 1855 such as fuel, Stationary, Lights hire of servant etc

Whereupon Court adjourned until Court in Course.

J J Davenport.

Kirby Benedict

January term 1857.

At a term of the Supreme Court of the Territory of New Mexico begun and held at the Court house in the city of Santa Fe on the first monday of January A.D. 1857.

Present:

Hon. J. J. Deavenport Chief justice of said Court
" Kirby Benedict Associate "
" Perry E. Brocchus "
Charles Blummer U.S. Marshal
A. De Marle Clerk.

The Marshal appointed Hartford Cook Bailiff for the present term, who appeared and was duly sworn as such.

Hugh N. Smith Esq. after making some appropriate remarks upon the life of the deceased on behalf of the members of the bar of the Supreme Court offered the following preamble and resolutions which had been previously adopted by them at a meeting of said members:

Whereas we have received the painful intelligence of the sudden death of our esteemed fellow citizen and worthy brother member of the bar of New Mexico James D. Orin who died at his residence on the 31st Day of December A.D. 1856 in Taos —

The memory of whose virtues and social qualities as a private citizen, and whose talents, zeal and worth as a member of our profession will ever be cherished and re-

remembered by us

Be it therefore resolved

That in his death we have lost one of the oldest members and brightest ornaments of our much loved profession who by his private worth and social qualities, by his honesty intelligence and fidelity had won the friendship and affection of the people of this Territory.

Resolved That we from our close connection with him in the walks of our profession feel more deeply his loss and that he has left a place in our midst which cannot soon be filled.

Resolved

That also his loss has been great to us we sincerely condole with his family in their bereavement for to them this place can never be filled.

Resolved

That in token of our sincere regard we will wear the usual badge of mourning for thirty days

Resolved

That these proceedings be published in the Sentinel & Gazette, Illinois State Register and Baltimore Sun and that a copy of the same be forwarded by the Clerk to his relations in Baltimore

After the preamble and resolutions were read upon motion the Court ordered the same to be

January Term 1857

Spread upon the records of this Court and in respect to the memory of the deceased it is further ordered that the Court adjourn until to morrow morning at 10 O'clock

Whereupon Court adjourned until 10 O Clock to morrow morning

F F Davenport

Kirby Benedict

Perry E. Brockett.

January Term 1857.

January 6th 1857.

Court met pursuant to adjournment.
Present as of yesterday.

The minutes of yesterday were now read approved and signed by the Judges.

+ C. W. Dosthoff an alien and native of Hannover and a subject of the King of Hannover personally appeared in open Court and made application to be naturalized under the laws of the United States, and it appearing, by sufficient testimony of Charles Blumer, Charles Clever & Major Nicols good and law ful citizens of the United States of the Court, that he the said C. W. Dosthoff had made declaration of his intention to become a citizen of the United States, more than two years before arriving at the age of twenty one years and that he has been a resident of the United States for at least five years next last past, and of the Territory of New Mexico for at least one year and also that during that time, he had behaved as a man of good moral character attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same; whereupon, by order of the Court an oath of allegiance and renunciation in due form of law to the alien C. W. Dosthoff in open Court, that he will support the Constitution

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January Term 1857.

the United States and that he absolutely and entirely renounced and abjured all allegiance and fidelity to every foreign prince potentate state or sovereignty whatsoever and particularly to Ernest Augustus King of Hanover whose subject he was. And thereupon it was ordered by the Court, that a certificate of naturalization be granted to the said P. W. Graskaff according to the form of the Statutes of the United States in such case made and provided.

The Clerk presented to the Court a seal which he had made in the United States for his office as Clerk of the Supreme Court for the Territory of New Mexico, which said seal was approved by the Court.

John S. Watts
vs
The County of Santa Fe } Assumpsit

By agreement of the parties this cause is continued to the next Term of this Court.

Whereupon Court adjourned until 10 O Clock to-morrow morning.

J. D. Davenport
Kirby Benedict
Perry E. Brockunier.

January term 1857.

January 7th 1857

Court met pursuant to adjournment
Present as of yesterday D.

They minutes of yesterday were now read, approved and signed by the Judges.

Ward Hall & Co
7 vs
Hugh M. Beckwith 339

Now comes the appellants by H. D. Wheaton ~~and~~ their attorney and files in Court the assignment of Errors in this case

Francisco Romero & Juan Bustamente
8 vs
Francisco Silva 333

Now comes the appellee by H. D. Wheaton his attorney and files in Court a motion to affirm judgement in this cause.

Victor de la O
10 vs
Pueblo de Acoma 333

Now comes the appellant by H. D. Wheaton his attorney and files in Court the assignment of Errors in this case.

Juan Archuleque
12 vs
Jose Maria Mirza 339

Now comes the appellant by A. Ashurst his attorney and files in Court the assignment of Errors in this case.

Marie

January Term 1857.

Maria Manuela Martinez
13 vs
Thomas Lynch

Now comes the appellant by H. D. Wheaton her attorney and files in Court the assignments of Errors in this case.

Maria Manuela Martinez
18 vs
Thomas Lynch

Now comes the appellee by Holmes & Johnson his attorneys and files a Joinder of Errors in this case.

Jesus Duran
14 vs
The Territory of New Mexico

Now comes the appellant by M. Holmes his attorney and files in Court the assignment of Errors in this case.

Jesus Duran
14 vs
The Territory of New Mexico

Now comes the appellee by H. D. Wheaton her attorney and files in Court a motion to affirm judgement in this case.

Marcial Zapata
15 vs
The Territory of New Mexico

Now comes the appellee by H. D. Wheaton her attorney and files in Court a motion

January Term 1857

to dismiss appeal in this cause.

17 George M^c Donald
vs
James H. Carleton

Now comes the appellant by Ph. D. Wheaton his attorney and files in Court the assignment of Errors in this case.

18 Daniel Green
vs
R. D. Evans

Now comes the appellant by Ph. D. Wheaton his attorney and files in Court the assignment of Errors in this case.

19. Roman Arriola
vs
Rafael Baron

Now comes the appellant by Ph. D. Wheaton his attorney and files in Court an affidavit and a motion for rule to amend appellant's Transcript in this case

2 Mariano Jaramillo
vs
Jose de la Cruz Romero

Now on this day the parties appearing by their attorneys and this cause is argued by Smith & Tom for the appellant and Merrill & Rynerson for appellee and the Court having heard the argument on both sides take the case under advisement

It is ordered by the Court that the

January Term 1857.

Following rule be spread on the minutes:

That when the arguments in a case are finished by the resp. attorneys and the case is submitted to the Court the brief of the resp. attorneys has to be submitted by or at the same time.

Francisco Sanchez
vs
Ramon Luna

Now comes the appellant by his attorney H. N. Smith and files in Court the assignment of Errors in this case.

Francisco Sanchez
vs.
Ramon Luna

Now comes the appellee by his attorney Merrill Johnson and files in Court a joinder of Error in this case

Now the members of the Bar make the motion to adjourn Court until the day after to morrow it being to morrow the anniversary of the glorious battle of New Orleans, which motion is granted by the Court

Whereupon Court adjourned until 10 O'clock on ~~Friday~~ morning the 9th inst.

J. D. Davenport.
Ripley Beauchamp
Peggy E. Beauchamp

January Term 1857

January 9th 1857.

Court met pursuant to adjournment
Present as of day before yesterday.

The minutes of day before yesterday were now read, approved and signed by the judges.

Roman Arellano
vs
Ramon Chacon.

Now comes the Appellee by Ashurst & Tompkins his Attorney and files in Court a transcript of Judgement and order of Court allowing an appeal to the Supreme Court

Pueblo of Laguna
vs
Pueblo of Acoma

Now comes the appellant by M. Ashurst Esq Attorney and files in Court the assignment of Errors in this case.

Roman Arellano
vs
Ramon Chacon

Now comes the appellee by Ashurst & Tompkins his Attorney and files in Court a motion to dismiss Appeal in this case

On the motion of A. D. Wilcox, Esq. Francis J. McCurdy Esq. is sworn duly sworn in as a member of the Bar of this Court

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January Term 1857

Vicente Garcia an alien ~~subject~~ citizen of U.S. and native of Mexico and a ~~subject~~ citizen of the Republic of Mexico personally appeared in open Court and made application to be naturalized under the laws of the United States and it appearing by the testimony of Mr H.N. Smith Esq. and R.H. Tompkins Esq. two good and lawful citizens in the satisfaction of said Court that the said Vicente Garcia had made declaration of his intention to become a citizen of the United States in due form of law, at least two years before making his said application; and that he had been a resident of the United States for at least five years then last past and of the Territory of New Mexico for a year & upwards and also that during that time he had behaved as a man of good moral character; attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same; whereupon by order of the Court the oath of allegiance was administered in due form of law to the said Vicente Garcia in open Court that he will support the Constitution of the United States and he absolutely and entirely renounced and abjured all allegiance and fidelity to every foreign prince potentate, State or sovereignty whatsoever and particularly to the Republic of Mexico whose subject he was, and thereupon it was ordered by the Court that a certificate of naturalization be granted to the said Vicente Garcia according to the statutes of the United States in such case made & provided.

January Term 1857

Francisco Romero & Juan Benavides
vs
Francisco Silva

Now comes the appellant by Jh. D. Wheaton his attorney and files in Court this præcipe in Error in this case

William S. McKnight
vs
Manuela Ants Chaves

This day the parties appeared by their attorneys and the cause is argued by M. Ashworth for appellant and Smith and Thompkins for appellee and the Court having heard the full argument on both sides takes the case under advisement.

Victor de la O
vs
Pueblo of Laguna

Now upon application of Jh. D. Wheaton leave is given by the Court to withdraw the assignment of Errors which he had filed in this case

Francisco Romero & Juan Benavides
vs
Francisco Silva

Upon application of Jh. D. Wheaton leave is given by the Court to withdraw the petition for appeal which he had filed in this cause

Whereupon Court adjourned until 10 O'Clock tomorrow morning

J. D. Leavenport
Kirby Benedict
Presiding Justice

January Term 1857

January 10th 1857.

Court met pursuant to adjournment. Present as yesterday

The minutes of yesterday were read, approved and signed by the Judges.

Victor de la O.
10 vs
Pueblo de Acoma

Now comes the Appellant by N. D. Wheaton his attorney and files in Court a Statement of cause why errors have not been assigned

Pueblo of Laguna
9 vs
Pueblo of Acoma

Now comes the appellee by Bear & Smith his attorneys and files in Court a praecipe for Errors in this case.

Pueblo of Laguna
9 vs
Pueblo of Acoma

Now comes the appellant by N. Stevens her attorney and files in Court a Statement and affidavit why Errors have not been assigned in this case.

In the matter of
3 Catalina Buchamante

Habeas Corpus

Now comes the Appellant by N. D. Wheaton her attorney and files in Court an affidavit and assignment of errors in this case

Daniel

January term 1857

Daniel Green
vs
R. T. Ewell

Now comes the appellee by H. M. Smith his attorney and files in Court a joinder in Error in this case.

In the matter of
Catherine Buckmaster

Habeas Corpus

This cause came on to be heard upon the following motion
Now at this day comes the defendant appellee in this case and moves the Court to dismiss the appeal herein the judgement of the District Court for the want of prosecution on the part of the appellant & Because no Error has been assigned according to law

Upon consideration of the appellee and this motion having been argued by the counsels and the Court being fully advised in the premises it is therefore ordered

Parks vs Laguna
vs
Parks et Aloma

This cause came on to be heard upon the following motion
Now at this day comes the appellee and moves the Court to dismiss said cause for want of prosecution & because & Transcript has not been filed by appellee and this motion being argued by the Counsels and the Court being fully advised in the premises it is therefore ordered

Romero Williams
vs
Rafael Chacon

Now at this day comes

January Term 1857

by the Court that a rule be made upon the Clerk of the U.S. District Court for the Second Judicial District to show cause, why he did not send up the Transcript in the above entitled case and that this order be returned in 10 days.

Victor de la O
vs
Pueblo de Acoma

Now comes the Appellant by his attorney J. D. Wheaton and files in Court a motion for rule of mandamus upon the Clerk of the 3d Judicial District to send up a perfect transcript in this case

In the matter of
J. Casaliano Bernalillo

Habeas Corpus.

Now comes the Appellee by M. his attorney and files in Court a joinder of Error in this case

Whereupon Court adjourned until monday morning at 10 O Clock

J D Deavenport
Kirby Benedict
Perry E. Brenchley

January term 1857

January 12th 1857.

Court met pursuant to adjournment. Present as on day before yesterday.

The minutes of the day before yesterday were now read, approved and signed by the judges.

George McDonald
vs
James H. Carleton

Now comes the appellee by H. N. Smith his attorney and files in Court a joinder in Error in this case.

Pueblo of Laguna
vs
Pueblo of Acoma

Ch. Ancury

On this day the parties appeared by their attornies and the cause is argued by M. Ashurst for appellant and Smith & Beard for appellee and the Court having heard the full arguments on both sides, takes the case under advisement.

Whereupon Court adjourned until 10 O'Clock to morrow morning

J. J. Davenport

Kirby Benedict,

Perry E. Brockunier.

January Term 1857

January 13th 1857.

Court met pursuant to adjournment.
Present as of yesterday.

The minutes of yesterday were now read, approved and signed by the Judge.

Francisco Sanchez
16. vs
Ramon Luna

This cause came on to be heard upon the following Statement, and now comes the Appellant and says to the Court that the record in this cause is now complete, that a true & correct Statement of the opinion of the Court in this allowing amended petition in the District Court and in allowing the additional affidavit to said petition, which was regularly taken and signed by the Judge is not on the record, that a motion for a new trial was made after the verdict of the jury is now in the record, that the said motion and bill of exceptions were regularly made and were placed with the files of the papers in the causes of the Clerk (sign.) Beard & Smith for appellant

and this Statement being argued by the Counsel and the Court being duly advised in the premises do it is ordered by the Court that a writ of certiorari be issued from the Clerk of the 1st District Court for the 3d Judicial District, commanding him to send up to this Court a true & correct transcript of the record

1/2

January Term 1857

Chancery Cause. Returnable in fifteen days

Allen J. Donalson

vs

County of San Augustine

By agreement of the parties this cause is continued over the next Term of this Court.

Walker Hearn & Co.

vs

Hugh N. Berwick

This day the parties appeared by their attorneys and this cause is argued by N. D. Thompson for appellant and A. Ashmore & H. W. Smith for appellee, the argument of the cause on the part of the Appellee is concluded on the part of by Ashmore & Smith and the further hearing of the cause is postponed until to-morrow.

Whereupon Court adjourned until 10 O'Clock to-morrow morning

J. D. Davenport,

Kirby Benedict

Perry E. Brocchus

January Term 1857.

January 14th 1857.

Court met pursuant to adjournment.
Present as of yesterday.

The minutes of yesterday were now read, approved and signed by the judges

Waco Hall & Co
vs
Hugh N. Beckwith

The argument in this case is now continued on the part of the appellants by Th. D. Wheaton their attorney and concluded, and the Court having heard the full argument on both sides, takes the case under advisement.

Juan Arciniegue
vs
Jose Maria Mora

This day the parties appeared by their attornies and this cause is argued by Mr. Ashworth for Appellants, whereupon the further hearing is postponed until to morrow.

Whereupon Court adjourns until 10 O Clock A.M. tomorrow morning

J. D. Davenport.
Kirby Benedict
Percy E. Brockus.

January Term 1857

January term 15th 1857

Court met pursuant to adjournment
Present as of yesterday

The minutes of yesterday were now read, approved and signed by the Judges.

Victor de la O
vs
Pueblo de Acoma

This case came on to be heard upon a motion of Appellant by Th. D. Wheaton his attorney suggesting a diminution of record, which motion was withdrawn upon the proposition of Appellee by Smith & Beard their attorneys, to file a document connected with the case and leave is given by the Court to Appellant to file his assignment of Errors in this case.

Geronimo Vega an alien and native of Spain personally appeared in open Court and declared on his solemn oath, that it is his bona fide intention to become a citizen of the United States, and that he renounces forever all allegiance and fidelity to every foreign prince, potentate, State or sovereignty whatsoever, and particularly all allegiance and fidelity to Isabella II Queen of Spain, whose subject he was

Juan Vigil y Negrete
vs
Jose Maria Olivera

The argument of

January Term 1857

of this cause this day coming on to be heard on the part of the appellee Cyrus Baird Esq. and counsel on the part of Appellant by Th. D. Wheaton Esq. and the Court having heard the [illegible] argument on both sides the case is taken under advisement

Whereupon Court adjourned until 10 O'Clock to morrow morning

J. D. Leavenworth J.

Kirby Benedict

Perry E. Brocchus

January term 1857

January 16th 1857.

Court met pursuant to adjournment.
Present as yesterday

The minutes of yesterday were now read, approved and signed by the judges.

Victor de la O
vs
Amelio de Aroma

Now comes Hon. Appellant by H. D. Wheaton his attorney and files in Court the assignment of errors in this case

Victor de la O
vs
Pueblo de Aroma

Now comes the appellee by Baird and Smith his attorneys and files in Court a joinder in Error in this case.

Francisco Romero et
Juan Benavides
vs
Estanislao Silva

This day the parties appeared by their attorneys, and the case is now argued by M. Romero Esq. for Appellants and Controverted by H. D. Wheaton Esq. for Appellees, and the Court having heard the full argument on both sides, takes the case under advisement.

Whereupon Court adjourned until 10 O'clock tomorrow morning.

H D Davenport
Kirby Benedict

Pedro C. Pino

January term 1857

January 17th 1857.

Court met pursuant to adjournment.
Present as of yesterday.

The minutes of yesterday were read, approved and signed by the judges.

Roman Arrellano
vs
Rafael Chacon

This case coming on to be heard upon a motion by Ashmead & Tompkins, attorneys for appellee to dismiss the appeal of the appellant for want of prosecution appearing from the records of the Clerk of the U.S. District Court for the second Judicial District sitting in this cause that no reasons why the writ of error should not be dismissed this cause appeared satisfactory to the Court and leave is given to the appellant to file the assignment of Errors in this case.

Roman Arrellano
vs
Rafael Chacon

Now comes the appellee by Ashmead & Tompkins his attorneys and files in Court a motion for dismissal for costs in this cause.

Roman Arrellano
vs
Rafael Chacon

Now comes the appellant by M. D. Hoatson his attorney and files in Court the assignment of Errors in this case.

January Term 1857

Nicente Mestas

vs

Benito Mestas

3333

This day the parties appeared by their Attorneys and upon entering to argue the case it appeared to the satisfaction of the Court that the Depositions in this cause do not perfect. It is therefore ordered by the Court that a writ of Certiorari be issued upon the Clerk of the US District Court for the second Judicial District commanding him to send up to this Court a true and perfect Transcript in this cause, returnable in 8 days

Whereupon Court adjourned until 10 O'Clock on monday morning

J. J. Davenport,

Kirby Benedict

Per E. Bracken

January Terme 1857.

January 19th 1857.

Court met pursuant to adjournment. Present as of day before yesterday.

The minutes of day before yesterday were now read, approved and signed by the judges.

Ramon Arriluen
vs
Rafael Aaron 33

Now comes the appellant by Wm. D. Wheadon his attorney and files a Bond for damages of costs for transcript and service. Writs in this cause

Maria Manuela Martinez
13. vs
Thomas Lujero 33

This day the parties appeared by their attorneys and the case is now argued by Wm. D. Wheadon for appellant, the further hearing of which is postponed until to morrow.

Whereupon Court adjourned until 10 O'Clock to morrow morning

J. H. Davenport
Kirby Benedict
Geo. E. Breece

January Term 1857

January 26th 1857.

Court met pursuant to adjournment
Present as yesterday.

The minutes of yesterday were now read, approved and signed by the judges.

Maria Manuela Martinez
vs
Thomas Lozero

The argument in this case is now continued on the part of the appellant by H. D. Wheaton, and on the part of Appellee by R. H. Tompkins Esq. the further hearing of which is postponed until to morrow.

Whereupon Court adjourned until 10 O'clock to morrow morning

J. L. Crawford
Kirby Benedict
Perry E. Broaches.

January term 1857.

Circt. January 21st 1857.

Court met pursuant to adjournment.
Present as of yesterday.

The minutes of yesterday were now read, approved and signed by the judges.

Maria Manuela Martinez
vs.
Thomas Lenzen

The argument in this cause is now continued on the part of appellee by M. Ashmore Esq., and the further hearing of this cause postponed until to morrow

Whereupon Court adjourned until to morrow morning at 10 O'clock

J. D. Davenport,
Hiram Benedict
Perry E. Brockett.

January Term 1857

January 22d 1857.

Court met pursuant to adjournment
Present as of yesterday

The minutes of yesterday were
now read, approved and signed
by the judges.

Maria Manuela Martinez
13 vs
Tomas. Luzero

The argument
in this cause is now continued and the
conclued on the part of the Appellant
by H. D. Wheaton. Esq. and the Court
having heard the full argument on
both sides, takes the case under
advisement.

Whereupon Court adjourned until
10 O Clock to morrow morning

J. D. Davenport
Kirby Benedict
Wm E. Brockett.

215

January term 1857

January 23d 1857

Court met pursuant to adjournment.
Present as of yesterday.

The minutes of yesterday were now read, approved and signed by the Judges.

Victor de la O
vs
Incho de Acoma

This day the parties appeared by their attornies and this case is now argued on the part of plaintiff by A. D. Wilson Esq. and on the part of appellee by Heard & Smith Esq. and the Court having heard the full argument of both sides takes the case under advisement.

Whereupon Court adjourned until 10 O Clock to-morrow morning.

J. J. Davenport P.

Kirby Benedict

Perry E. Brocchus

January Term 1857

January 26th 1857.

Court met pursuant to adjournment.
Present as on the 23d inst.

The minutes of the 23d inst. are now read, approved and signed by the Judges

Martial Lefevre
14 vs
Territory of New Mexico

This case is submitted to the Court upon the following motion;

Defendant moves the Court to dismiss the appeal herein for the reason that there are no bills of exceptions filed or errors assigned in said cause and for other good and sufficient reasons. H. D. Teaford for appellee

In the matter of
3 Catalina Bustamante
Habeas Corpus

This day the parties appeared by their attorneys and the case is now argued by C. P. D. Wheaton Esq. on the part of Appellant and D. Johnson Esq. on the part of Appellee and the Court having heard the full argument on both sides, takes the case under advisement

Whereupon Court adjourned until 10 O Clock to morrow morning

J. D. Davenport

Kirby Benedict

Perry E. Brocchus

January Term 1857

January 27th 1857.

Court met pursuant to adjournment. Present as yesterday. ( )

The minutes of yesterday were now read, approved and signed by the judges

Vicente Mestres
vs
Benito Mestres

This case came on to be heard upon the following motion:

Appellant moves the Court for a further rule and certiorari upon the Clerk of the District Court of the 2d Judicial district requiring him to send up a perfect transcript of the Record in this cause — for the reason that he has failed to comply with the rule already granted

Wheaton for defendant and this motion being argued by the counsels and the Court not being fully advised in the premises takes the motion under advisement

George W. Dorsey
vs
James H. Carleton

This day the parties appeared by their attorneys W. H. D. Wheaton on the part of appellant and Knight & Smith on the part of appellee and by agreement submitted this case to the Court without making any arguments

Adv

January Term 1857.

Daniel Green
vs
R. F. Ewell

This day the parties appeared by their attorneys, and this case is now argued on the part of appellant by Spruce M. Baird Esq. and on the part of appellee by R. H. Smith Esq. and the Court having heard the full argument on both sides takes the case under advisement.

Whereupon Court adjourned until 10 O Clock to morrow morning

J. H. Beaumont

Kirby Benedict

Perry E. Brocchus.

January Term 1857.

January 22nd 1857.

Court met pursuant to adjournment. Present as of yesterday.

The minutes of yesterday were now read, approved and signed by the judges.

It is ordered by the Court that a rule be issued upon D. M. Baird an attorney of this Court to show cause why an attachment for contempt of the Court should not be served upon him, and he being present waives the service, whereupon this cause is continued by the Court until 10 O'Clock to morrow morning, and order is given that the charges of Hon. P. E. Brockus be reduced to writing.

Whereupon Court adjourned until 10 O'Clock to morrow morning

J. J. Davenport

Kirby Benedict

Perry E. Brockus

January term 1857

January 29th 1857

Court met pursuant to adjournment
Present as on yesterday

The minutes of yesterday were now read approved and signed by the Judges.

On motion of Hon. W. Smith Esq. Hezekiah S. Johnson Esq. is now duly sworn as an attorney of the bar of this Court

In the matter of }
S. M. Beard } Contempt of Court

The charges of Hon. P. E. Bowers relative to writing having been read upon S. M. Beard's motion and by leave of the Court, time is allowed to answer, which is granted by the Court and it is ordered that certain affidavits of Hon. P. E. Bowers & others be filed in support of the charges & also the affidavits in answer.

Whereupon Court adjourned until Monday morning at 10 O'clock.

J. F. Lewenport,
Kirby Benedict
Wm. E. Bowers.

January Term 1857

February 2d 1857

Court met pursuant to adjournment

Present as yesterday

The 29th day of January

The minutes of the 29th day of January were read, approved and signed by the Judges

In the matter of }
of Ed Beard } Contempt

This cause came on to be heard upon the following motion

The Revd. Ed. Beard moves the Court for discharge for the following reasons

1st That the Sheriff of the County who imprisoned the Charges has withdrawn there as appears by a writter Communication from him filed in the cause

2d That the said charges do not set forth they no way allege what would constitute a Contempt of this Court

3d That Ed. Beard has in his answer given full purgation of all Contempt

T. D Wheaton for Ed Beard and the Charges and answer in this matter being read to the Court and the Court being fully advised of the premises it is ordered by the Court that Ed Beard be discharged and that he fully purged from all of the Contempt charged in this cause.

January Term 1852

Henry Burk
in
Santiago Otero

Now comes the appellee by Smith & Spotswood their attorneys and moves the Court to dismiss this cause for want of prosecution

Roman Arellano
vs
Rafael Chacon

This day the parties appeared by their attorneys and this cause is now argued on the part of appellee by A. G. Wheelon Esq. the former hearing of which is postponed until to-morrow

Thereupon Court adjourned until 10 O'Clock to-morrow morning.

J. J. Davenport,
Kirby Benedict,
Pers. Co. Boundary

January term 1857.

February 3d 1857.

Court met pursuant to adjournment and Present as of yesterday.

The minutes of yesterday were now read, approved and signed by the judge.

Roman Williams
vs
Rafael Chacon

The argument in this cause is now continued on the part of Appellee by R. H. Compton and Merrill Ashmun Esq., and the Court having heard the full arguments on both sides takes the case under advisement.

Whereupon Court adjourned until 10 O Clock to morrow morning

J. D. Davenport
Kirby Benedict
Percy E. Prendergast

January Term 1857.
February 4th 1857.

Court met pursuant to adjournment
Present as of yesterday.

The minutes of yesterday were now read, approved and signed by the Judges.

Henry Rucker
vs
Santiago Abreu

This case came on to be heard upon the following motion:

And now comes the appellee and produces the record in said cause and moves the Court to dismiss the same for want of prosecution

Smith & Duncan for motion and this motion being argued by the counsels and the Court not being fully advised in the premises takes the motion under advisement

Whereupon Court adjourned until 10 O'Clock to morrow morning

J. J. Davenport

Kirby Benedict

Chf. Jus. Supreme Court.

January Term 1857
February 5th 1857.

Court met pursuant to adjournment.
Present as on yesterday.

The minutes of yesterday were now read, approved and signed by the Judge.

It is ordered by the Judge of the Supreme Court at the seat of government assigned by the Constitution for the District Court of the first Judicial District of the Territory of New Mexico that the said District Court of the first Judicial District of the Territory of New Mexico shall be held in the City of Santa Fe at the Court house of the County of Santa Fe in said County of Santa Fe. The Spring Term thereof shall commence on the second Monday in March 1857 and continue for the space of four weeks if business so long requires and the last term. Thereof shall be held at the same place on the fourth Monday of August and continue for three weeks if business so long requires and the last term thereof shall be held at the same place on the fourth Monday of September and continue for two

January Term 1857

English and Spaniards in the Santa Fe
Gazette in the Space of three weeks
and that they respectively keep up in English
and Spanish the Journals and Proceedings of the Legislative Assembly of this Territory

Francisco Sanchez
vs
Ramon Luna

This day the parties appeared by their attorneys and this case is now argued on the part of Appellant by H.C. Smith Esq. and on the part of Appellee by Merrill Followed by R. B. Mills Esq., further hearing of which is postponed until to morrow.

Whereupon Court adjourned until 10 o'clock to morrow morning

J. J. Davenport J.

Kirby Benedict

Chas E. Bancroft

January Term 1857.

February 6th 1857

Court met pursuant to adjournment. Present as of yesterday

The minutes of yesterday were now read approved and signed by the Judges

Francisco Sánchez
vs
Ramon Luna

The argument in this cause is now continued on the part of Appellee by R. H. Dunlap Esq. and concluded on the part of Appellant by Th. N. Smith Esq., and the Court having heard the full arguments on both sides taken the case under advisement.

Henry Kuhn
vs
Santiago Moore

The motion of Appellee to dismiss this cause having been taken under advisement by the Court and in appearing to the Court from the record in this case has been respectfully it is ordered by the Court that this motion be overruled.

Vicente Mesta
vs
Benito Mesta

The motion of Appellant for a further rule and

January Term 1857

certiorari upon the Clerk of the County Court to perfect transcripts having been taken under advisement by the Court and it appearing to the satisfaction of the Court, that the perfected transcripts in this case is ~~as perfect as it could be~~ complete it is ordered by the Court that the motion be overruled

Whereupon Court adjourned until 10 O Clock to morrow morning

J. J. Davenport,

Kirby Benedict

Perry E. Brocchus.

229

January term 1857.

February 7th 1857.

Court met pursuant to adjournment.
Present as of yesterday.

The minutes of yesterday were now read, approved and signed by the Judges.

Jesus Duran
vs
The Territory of New Mexico

This cause came on to be heard upon the following motion:

The Territory moves the Court to dismiss said appeal and affirm the judgement herein, for the reason that a copying of the record was filed according to law within ten days before the first day of this Term of the Court and also brings in and shows to the Court a copy of the Decree, showing that an appeal was allowed in the name Wheaton for Territory and this motion being argued by the counsels and the Court being fully advised in the premises, overruled this motion whereupon by agreement of the parties. This cause is submitted to the Court without any arguments.

Marcial Laforge
vs
The Territory of New Mexico

This case having been on motion of appellee in this case to dismiss the

January Term 1857.

appeal herein having been taken since argument by the Court, and the Court now being fully advised in the premises sustains said motion.

It is therefore ordered by the Court that said appeal case be dismissed and the judgement of the District Court for the first Judicial District be confirmed and that the costs in this case be taxed against appellant

Whereupon Court adjourned until morning morning at 10 O. Clock.

J. J. Davenport

Kirby Benedict

Reed E. Bancroft

January Term 1857.

February 9th 1857

Court met pursuant to adjournment
Present as on day before yesterday

The minutes of day before yesterday were now read, approved and signed by the judges

Sampson Bentmer an alien and native of Prussia and a subject of the King of Prussia personally appeared in open Court and made application to be naturalized under the laws of the United States, and it appearing by the testimony of Charles Clever and Charles Blumner to the satisfaction of the Court, that he the said Sampson Bentmer had made declaration of his intention to become a citizen of the United States in the form of law at least two years before making his said application; and that he has been a resident of the United States for at least five years next last past, and of the Territory of New Mexico for at least one year next last past; and also that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; whereupon by order of the said Court, an oath of allegiance was administered in the form of law to the said Sampson Bentmer in open Court, that he will support the Constitution of the United States and that he ab-

January term 1857

absolutely and entirely renounced and abjured all allegiance and fidelity to every foreign Prince, Potentate, State or Sovereignty whatsoever, and particularly to Frederic William IV King of Prussia, whose subject he was, and thereupon it was ordered by the Court that a certificate of naturalization be granted to the said Sampson Bentner according to the Statute of the United States in such case made and provided

Ex parte of Laguna
vs
Pueblo of Acoma

This cause having been submitted to the Court at a former day and the Court being now fully advised in the premises deliver their opinion herein (Recorded in opinions book I pages) by Chief Justice J. J. Deavenport

Juan Archuleque
vs
Jose Maria Chiera

This cause having been submitted to the Court at a former day and the Court being now fully advised in the premises deliver their opinion herein / Recorded in opinion book I pages / by Chief Justice J. J. Deavenport

Daniel Green
vs
R. S Ewen

This cause having been submitted to the Court at a former

January terom 1857.

day, and the Court being now fully advised in the premises deliver their opinion herein / Recorded in opinion book I pages 1 by associate justice Kirby Benedict

George McDonald
vs
James H. Carleton

This cause having been submitted to the Court at a former day, and the Court being now fully advised in the premises deliver their opinion herein / Recorded in opinion book I pages 1 by associate Justice Kirby Benedict

William S. McKnight
vs
Manuela Antª Chavez

This cause having been submitted to the Court at a former day, and the Court being now fully advised in the premises deliver their opinion herein / Recorded in opinion book I pages 1 by Associate Justice Kirby Benedict

Pueblo of Laguna
vs
Pueblo of Isleta

This cause came on to be heard upon the record and errors joined and was argued by counsel and the Court being now fully advised in the premises do consider order and adjudge that the judgement of the District Court be and

January Term 1857

the same hereby is affirmed with costs.
but it appearing by the record in this cause that
in the security upon the appeal bond
it is therefore considered by the Court
that the appellee recover of the appellant
his costs in this behalf laid out and
expended. and that execution issue therefore

Juan Antonio Aguirre
vs
Jose Maria Mier

This cause came on to be heard upon the record and
Errors joined and was argued by
Counsels and the Court being now
fully advised in the premises do
consider error and adjudge that
the judgement of the District Court be
affirmed and the same hereby is affirmed
with costs. and it appearing by
the record in this cause that Manuel Bi-
carra and Diego Bacca the securities
upon the appeal bond it is therefore
considered by the Court that the
appellee recover of the appellant
and the said Man. Bicarra and Diego Bacca
his costs in this behalf laid out
and expended. and that execution issue
therefore

Daniel Green
vs
A. S. Ewell

This cause came
on to be heard upon the record and
Errors joined and was argued by
Counsels and the Court being
now fully advised in the premises

January Term 1857.

do consider order and adjudge, that the judgment of the District Judge be and the same hereby is affirmed with costs. And it appearing by the record in this cause that John S. Watts is the security upon the appeal bond it is therefore considered by the Court that the appellee recover of the appellant and Wm John S. Watts his costs in this behalf laid out and expended; and that execution issue therefore

George M^c Donald
vs
Major James H. Carleton

This cause came on to be heard upon the record and Errors joined and was duly submitted by the counsels of the respective parties to the judgement of the Court without argument, and the Court being now fully advised in the premises do consider order and adjudge that the judgement of the District Judge below be and the same hereby is affirmed with costs. And it appearing by the record in this cause that John S. Watts is the security upon the appeal bond in the case consideration by the Court that the appellee recover of the appellant and John S. Watts his costs in this behalf laid out and expended, and that execution issue therefore

William S. M^c Knight et al.
vs
Manuela Ortiz de Chaves

This

January term 1857.

cause came on to be heard upon the record and were joined and argued by counsels, and the Court being now fully advised in the premises, do consider, order and adjudge, that the judgement of the District Court below be and the same is hereby affirmed. And it appearing by the record in this cause that Preston Beck Jr and John S. Marr are the securities upon the appeal bond in this cause considered by the Court that the respective securities of the appellants are the said Preston Beck jr. and John S. Marr for costs in this behalf laid and incurred. and that execution issue therefore

Whereupon Court adjourned until 10 O'Clock tomorrow morning

J. Davenport

Kirby Benedict

Perry E. Brocchus.

237

January term 1857
February 10th 1857.

Court met pursuant to adjournment.
Present as of yesterday.

The minutes of yesterday were now read, approved and signed by the Judges.

Vicente Medina
vs.
Benito Morales

By agreement of the parties this case is continued to the next term of this Court.

Henry Burke
vs
Santiago Abreu.

This day the parties appeared by their attorneys and this case is now argued on the part of application by Merritt Ellison Esq. and on the part of opposition by Hugh W. Sanders and R. H. Dunn Esq. and the Court having heard the full arguments on both sides take the case under advisement.

Whereupon Court adjourned until to Occ. on Saturday morning.

J. L. Devereux.

Kirby Benedict

Benj. E. Brecheen.

January term 1857

February 14th 1857

Court met pursuant to adjournment on Monday. Present as on the 10th instant.

The minutes of the 10th inst. were now read approved and signed by the judge

Hale Hall & Co
vs
Hugh M. Beckwith

This cause having been submitted to the Court at a former day and the Court being now fully advised in the premises deliver their opinion therein / Recorded in opinion book I pages / By Hurley Benedict Associate Justice

Mariana Jaramillo
vs
Jose de la Cruz Romero

This cause having been submitted to the Court at a former day and the Court being now fully advised in the premises delivered their opinion therein Recorded in opinion book I pages By Hurley Benedict Associate Justice

Maria Manuela Montoya
vs
Thomas Lezgero

This cause having been submitted to the Court at a former day and the Court being now fully advised in the premises delivered their opinion

January term 1857

Thereon by Perry E. Brockins J.S. Decided Justice / Recorded in Opinion book I pages

Jesus Duran

vs

The Territory of New Mexico

This cause having been submitted to the Court at a former day and the Court being now fully advised in the premises Delivers their opinion Therein by J. J. Deavenport Chief Justice / Recorded in Opinion book I. pages

Wallace Hall & C'o

vs

Hugh N. Smith

This cause came on to be heard upon the record and Errors joined and was argued by counsels and the Court being now fully advised in the premises to consider, Order and adjudge that the judgement of the District Court below in this cause is hereby affirmed with costs. And it appearing by the record in this cause that W. W. H. Davis, J. Cooper and Charles Spencer are the securities upon the appeal bond in this cause from the decision of this Court / It is therefore considered by this Court that the appellees recover of the appellant and the said W. W. H. Davis, J. Cooper and Charles Spencer ~~recover~~ the sum of five hundred dollars & Costs in this behalf laid out and expended and that execution issue therefor.

January Term 1857.

Mariana Jaramillo
vs
Jose de la Cruz Romero

This cause came on to be heard upon the errors assigned and the same was argued by the counsels of the respective parties and the Court being now fully advised in the premises do herein and hereby adjudge that the judgement of the District Court below be and the same thereby is reversed. It is further ordered and adjudged that judgment be rendered in favor of the Defendant and that the recovery of the plaintiff Romero her costs in the Court below and this Court laid out and expended and that execution therefore issue from this Court.

Maria Manuela Mourimes
vs
Juan Lugero

This cause came on to be heard upon the record and Exhibits filed and was argued by Counsel and the Court being now fully advised in the premises do herein and hereby adjudge that the judgement of the District Court below be and the same is hereby affirmed with a modification so far as to direct the Clerk without further notice to parties and that portion of the judgement rendered in the Court below which directs the sale of the mules

January Term 1857

and the same be buried against the respondents and that execution therefore issue from this Court

Jesus Duran

vs

The Territory of New Mexico

This cause came on to be heard upon the record and Errors joined and was submitted by the counsels of the respective parties to the judgement of the Court without argument, and the Court being now fully advised in the premises do consider order and adjudge that the judgement of the District Court below be and the same hereby is affirmed with costs

Whereupon Court adjourned sine die Tuesday the 17th inst. at 2 O Clock P.M.

J. H. Davenport

Kirby Benedict

Perry E. Brockett.

January term 1857
February 17th 1857.

Court met pursuant to adjournment. Present as on the 14th instant.

The minutes of the 14th instant were now read, approved and signed by the Judges.

In the matter of Catalina Fernandez } Habeas Corpus.

This cause having been submitted to the Court at a former day and the Court being now fully advised in the premises deliver their opinion therein by R. J. Deaderick Chief Justice / Recorded in opinion book I pages

Francisco Romero &
Juan Fernandes
vs
Francisco Silva } Writ

This cause having been submitted to the Court at a former day and the Court being now fully advised in the premises deliver their opinion therein by R. J. Deaderick Chief Justice / Recorded in opinion book I pages

In the matter of Catalina Fernandez } Habeas Corpus

This cause came on to be heard upon the record and Errors joined and was argued by Counsels and the Court being now fully advised in the premises do consider order and adjudge that the judgement of the District Court be

the

January tirm 1857

be and the same hereby is affirmed with
costs. And it appearing by the record
in this cause that John S. Wilkes and
R. H. Cunningham are the securities
upon the appeal bond it is therefore
considered by the Court that the appellee
recover of the appellants and their
John S. Wilkes and R. H. Cunningham
his costs in this behalf laid out
and expended and that execution
issue therefor

Francisco Romero
Peter Bonnicle
vs
Francisco Silva

This cause began
to be heard upon the record and
was argued by
the counsels and the Court being duly
fully advised in the premises it
Considers order and adjudge that
the judgement of the District Court
below be and the same hereby is af-
firmed with costs. It is therefore con-
sidered by the Court that the Plaintiff
recover the penal sum of the bond
100 dollars, which penal sum only
is to be discharged by the payment of fifty
dollars and interest on damages by reason
of the breach of the bond and it appear-
ing by the record in this cause that
Manuel Romero de la Cruz
Thomas and the Securities upon the
appeal bond it is therefore con-
sidered by the Court that the ap-
pellee recover of the said appellants
Manuel Romero de la Cruz and

January Term 1857

fifty dollars and his costs in this behalf laid out and expended and that execution issue therefore.

(5)

Whereupon Court adjourned until Friday the 16th inst. at 10 o'clock A.M.

J. H. Newmyer

Kirby Benedict

P. C. Pinckney.

January Term 1907.
February 20th 1907

Court met pursuant to adjournment.
Present as on the 17th inst.

The minutes of the 17th inst. were now read approved and signed by the judges

Victor de la O
vs
Pueblo of Acoma et al

This cause having been submitted to the Court at a former day and the Court being now fully advised in the premises do deliver their opinion therein by Hon. Benedict Mazoriaze Justice Reserved opinion book 1 pages

Victor de la O
vs
Pueblo of Acoma et al

This cause coming on to be heard upon the record and Errors joined and was argued by the counsels and the Court being now fully advised in the premises do consider, order and adjudge that the judgment of the District Court below be and the same hereby is affirmed with costs and in appearing by the record in this cause that Francisco Abreu and Others v. Wall et al the securities upon the appeal bond is not therefore considered by the Court that the appellee recover of the appellant and the said Francisco Abreu and John H. Wallis Executors in their behalf [illegible] and

January Term 1857

and Extended and Mar emeration
sine. Therefore

Whereupon Court adjourned
until 3 O'Clock P. M. to morrow.

J. D. Davenport

Kirby Benedict

Percy E. Bracebridge.

247

January Term 1857.

February 21st 1857.

Court met pursuant to adjournment. Present as of yesterday.

The minutes of yesterday were now read, approved and signed by the judges.

Francisco Sanchez
vs
Ramon Luna

This cause having been submitted to the Court on a former day and the Court being now fully advised in the premises delivered their opinion thereon by Kinney Benetict Associate Justice / Records opinion book 1 pages

Henry Rutz
vs
Santiago Uber.

This cause having been submitted to the Court on a former day and the Court being now fully advised in the premises delivered their opinion thereon by Henry E. Brockenbrough Associate Justice / Records opinion book 1 pages

Francisco Sánchez
vs
Ramon Luna

This cause came on to be heard upon the record and was argued by the counsel and the Court being now fully advised

January Term 1857

in the premises do consider order and adjudge, that the Judgement of the District Court below be and the same hereby is reversed and that the same hereby is remanded to said Court to be tried de novo and that the appellants recover of the appellee the costs of this appeal and that execution issue therefore.

Henry Burke
vs
Santiago Storey

This cause came on to be heard upon the record and Errors joined and was argued by the counsels and the Court being now fully advised in the premises, do consider order and adjudge that the judgement of the District Court below be and the same hereby is reversed and that the same hereby is remanded to said Court to be tried de novo, and that the appellant recover of the appellee the costs of this appeal and that execution issue therefore.

The Judges of the Supreme Court of the Territory of New Mexico being now assembled at Santa Fe the place of holding said Court, do in open Court at a session thereof order and fix the place of holding the United States District Court for the third Judicial District in said Territory to be until otherwise provided at the town of Socorro in the County of Socorro in said District.

The Secretary Return of said Court

January term 1839

shall commence on the first Monday of June of each year and continue for ten weeks, unless the business shall be sooner concluded.

The Fall Term shall commence on the second monday of October of each year and continue for ten weeks, unless the business shall be sooner concluded.

It is further ordered that all causes civil and criminal and all things pertaining thereto now pending in the District Court in any of the Counties of said District be transferred to said Court at the place above appointed and that the same be prosecuted in all respects to a full and perfect Conclusion therein.

It is further ordered that these orders be translated into the Spanish language and that the Clerk cause them to be published in both languages in the Santa Fe Gazette for the space of six weeks successively and that the Clerk forward copies to the Probate Judges of the several counties, to be posted up upon the Door of the Courthouses

Waldo Hall & Co
vs
Hugh N. Bellamy

Now come the Plaintiffs by their attorney H. D. Wheaton and file a Bill in Chancery and for injunction in this Cause, whereupon Defendant by his

January Term 1857

Solicitor Atkinson & Smith file a motion to dismiss this case for want of equity in said Bill, and for want of jurisdiction of this Court to grant a writ of injunction.

Whereupon Court adjourned until 9 O Clock on monday morning

J. J. Davenport,

Kirby Benedict

Perry E. Brocchus.

January term 1857.
February 23d 1857

Court met pursuant to adjournment
Present his Honor Saturday the 21st inst.

The minutes of the 21st inst. were now read, approved and signed by the judges.

Roman Arrellano
vs.
Rafael Chavez

This cause is taken under advisement until the next term of this Court.

Wadsworth & Co
vs
Hugh M. Beckwith

This cause came on to be heard upon the following motion:

Plaintiffs in appeal move the Court that the writ in said cause be vacated & that the record of the proceedings in attachment be quashed against the Defendants in appeal

Whereupon for Plaintiffs in appeal, and this motion being argued by the counsels and the Court being fully advised in the premises, ~~this~~ ~~therefore ordered by the Court~~ sustains said motion. It is therefore ordered by the Court that the writ & the attachment proceedings in the Court below be quashed against Hugh. M. Beckwith

Wadsworth & Co
vs
Hugh M. Beckwith

January Term 1857

This cause coming on to be heard upon the following motion:

And now comes the appellee and moves the Court to adjudge and decree to the appellee ten per centum damages on the amount of his judgement in the District Court, Ashmun & Knight, M. Boyce Smith for motion - and this motion being argued by the Counsels, and the Court being fully advised in the premises, overrules said motion.

David Walker
William M'Coy
Jacob Hall
vs
Application for Injunction

This case came on to be heard upon the following motion

Respondent Berwick by his counsel moves to dismiss said Bill for the following reasons

1. The supreme Court has no jurisdiction to grant a writ of injunction the same being the exercise of original and not appellate jurisdiction

2. For want of Equity in said Bill. Ashmun & Smith Solicitors for Respondent

and this motion having been argued by the Counsels and the Court now being fully advised in the premises, taken the motion under consideration.

It is ordered by the Court that Samuel Ellison be allowed the sum of fifteen Dollars for translating from Spanish to English to be taxed with the costs in the case of Victor de la Ossa Respt.

January Term 1857

de Arona.

It is further ordered by the Court that Sam. Elizon be allowed the sum of five Dollars for translating to be taxed with the costs in the case of Mariano Jaramillo vs Jose de la Cruz Romero.

It is ordered by the Court. that John Ward be allowed /4/ four Dollars for translating to be taxed with the costs in the case: In the matter of Catalina de Bustamante Habeas Corpus

It is further ordered by the Court that John Ward be allowed three Dollars /3/ for translating to be taxed in the case of William S. McKnight vs Manuela Sanchez.

It is ordered by the Court that the Clerk of this Court be allowed 10 Cents for each folio of 100 words for recording the Opinions of the Court in the Opinion book to be paid by the resp. parties in each case, against whom judgement is rendered to be taxed with the Bill of Costs

It is further ordered by the Court that A. de Marle be allowed five Dollars for translating two orders of this Court for publication in the Santa Fe Gazette, concerning the

January term 1857

time and places when the U.S. District Courts have to be held in this Territory.

It is ordered by the Court that Bell Johnson & Co be allowed the sum of $ 14.00 — for Stationery and Lights furnished for the use of said Court.

It is further ordered that Charles Bleumer be allowed the sum of $ 26.06 for 77 cords of wood furnished for this Court, viz; 32 cords at 3 bit and 45 cords at 2/3 per cord; and 24 Dollars for 12 cords of wood for the use of the Judges in the Territorial Library.

It is further ordered that Charles Bleumer be allowed the sum of $ 6.13 for cleaning the Snow from the roof of the Courthouse; for cleaning the Snow and ice from the foundation of the Courthouse and for carrying away the Snow and ice from the Streets in front of the Courthouse on various times from December 3rd 1856 to February 15th 1857

It is further ordered by the Court that A. F. Gregory be allowed the sum of $ 1.50 for repairing chairs for the Supreme Court

It is further ordered by the Court, that C. F. Clemer be allowed

January Term 1857

the sum of twenty eight Dollars for having furnished a seal for this Supreme Court

It is further ordered by the Court thus J. L. Collins be allowed the sum of forty eight Dollars for publishing 2 Orders of Supreme Court regulating the times and places of holding the District Courts for the period of 4 weeks in the Santa Fe Gazette and furnishing three bills to be printed up as the Doors of the Courth Houses of the several Counties

Whereupon Court adjourned until 10 O Clock to morrow morning

J. L. Davenport

Kirby Benedict

Chas. E. Bloom.

January Term 1857
February 24th 1857.

Court met pursuant to adjournment
Present as of yesterday

The minutes of yesterday were
now read, approved and signed by
the Judges

It is ordered by the Court
that Charles Blumer be allowed
the sum of $ 170, for 34 days
attendance on this Court as
U.S. Marshal at 5 Dollars per Diem

It is further ordered by the
Court that A. De Marle be allowed
the sum of $ 170 for 34 days
attendance in this Court as U
U.S. Clerk at 5 Dollars per Diem.

It is further ordered by the
Court that Hartford Graves be
allowed the sum of Sixty-eight
Dollars for 34 days attendance
on this Court as Bailiff
at two Dollars per Diem.

The Judges of the Supreme Court of
the Territory of New Mexico at the January
1857 of the 2nd Court do hereby order
and appoint Hon. Kirby Benedict
Special Commissioner to prepare
and report for publication all the
decisions of the Supreme Court
of this Territory, and it is further
ordered that the Clerk of this Said
Court shall furnish and furnish
to the said Hon. Kirby Benedict
all papers now pertaining to

January Term 1857

to the Execution of the Constitution hereby conferred

It is ordered by the Court that the Clerk of this Court be allowed five cents for each fol. for recording the opinions of the Court in the Opinion book to be used against the United States.

Walco Hauk & Co
vs
Hezekiah Beckwith } Bill in Chancery

The motion to dismiss this case having been taken under consideration and the Court now being fully advised in the premises, sustains said motion. It is therefore considered by the Court that said Bill in Chancery be and hereby is dismissed, and that Plaintiffs pay the costs of this proceeding to be taxed

It is ordered by the Court that all causes pending in this Court and otherwise disposed of be and hereby are continued to the next Term of this Court

Whereupon Court adjourned until court in course

J. Davenport.

Hiram Beckwith

Percy E. Brockus.

January Term 1859.

At a term of the Supreme Court of the Territory of New Mexico begun and held at the courthouse in the city of Santa Fe on the first monday of January A.D 1859

Present!

Hon. Kirby Benedict Chief justice of said Court.
Hon. W. F. Brown associate Judge
Charles A. Clever U.S. Marshal
H. De Marle Clerk

The Marshal appointed Severiano Romero Bailiff for the present term of this court, who appeared and was duly sworn as such

It is ordered by the court that a rule be issued upon James L. Barry Esq. Clerk of the U.S. District Court for the 2d Judicial District to show cause why he did not send up the Record in the appeal taken in the case of Salvador Garcia vs Mariano Rodriguez

On motion of Thos A. Smith Esq Roman A. Baca Esq and Alexander M. Jaramillo Esq. were duly sworn and admitted members of the Bar of this court

When upon the court adjourned sine die at 11 O'Clock A.M.

Kirby Benedict
Chief Justice

January Term 1859

January 4th 1859.

Court met pursuant to adjournment.
Present as of yesterday

The minutes of yesterday were now read, approved and signed by the judges

Miguel Sena y Romero
vs
Juan Sandoval

Now comes the appellant by H. D. Wheaton his attorney and files in Court the assignments of Errors in this case.

Esteven Cenorio
vs
The Territory of New Mexico

Now comes the appellant by Merrill Athearn & H. H. Hopkins Esqrs., and files in Court the assignments of errors in this case

George Carter
vs
The Territory of New Mexico

Now comes the appellant by Merrill Athearn Esq. and files in Court the assignment of Errors in this case

Antonio Matias Ortiz
vs
Jesus Maria Baca

Now comes the appellant by Merrill Athearn Esq and files in Court the assignment of Error in this case.

January Term 1859

Levi Spiegelberg admr. &c

vs

John H. Minnis } Now comes the appellant by Merritt Adams Esq. his attorney, and files in Court the assignment of Errors in this case

Jacob Dino

vs

Edward M. Abel } Now comes appellant by Atkinson & Wheaton his attorneys, and files in Court the assignment of errors in this case

O. P. Shepard

vs

Levi M. Geck } Now comes Levi M. Geck by Jones & Watts his attorney and files a motion to dismiss this case

One part of the proof of the court house having been fire this morning and the marshal nedrig 2 days to repair the damages, court adjourned until the day appointed to morrow at 10 O'clock in the morning.

Kirby Benedict

W. F. Boone

January Term 1859

January 6th 1859

Court met journed to adjournment. Present as of day before yesterday —

The minutes of day before yesterday were read, approved and signed by the judges.

Jacinto Pino

vs

Edelman M. Abee

Now comes the appellee by Smith & Humphreis his attorney and files in court a joinder of Errors in this case.

George Carder

vs

The Territory of New Mexico Now comes the appellee by R. H. Humphreis acting her attorney and files in court a joinder of errors in this case

Eleuna Eleuria

vs

The Territory of New Mexico Now comes the appellee by R. H. Humphreis acting her attorney and files in court a joinder of Errors in this case.

Maria Encarnacion Romero

vs

Augarda Munoz

This case came to be heard upon the following motion: Defendant and appellee move the court to dismiss the appeal in said cause, because there is no appearbon filed as required

January Term 1859

by law.' And this motion having been argued by the counsels and the court being divided in opinion it is ordered by the court that this case be continued to the next term of this court.

Encarnacion Romero
vs
Lugarda Nuñez } And now comes John D Marks Attorney for the appellant and suggests a diminution of the record in this, to wit, that the affidavits for the appeal is not sent up. He asks a certiorari to James Berry Clerk, returnable to the next Term of this court for the sending up of a more perfect transcript And it appearing to the Satisfaction of the court that said allegations are correct, order is given to issue said certiorari upon the Clerk of the 2d Judicial District Court

F. A. Cunningham
vs
William P. Dewey
Richard Owen
& George W Estes } And now the said Appellants, come and suggest to the Court a diminution of the record in this cause and says there is no transcript containing the Bill, mortgage, note mortgaged and affidavits nor copies of same filed in said Cause and moves the court, that the Clerk of the District Court be ordered to send up said transcript

January Term 1859

Smith and Monsarrat for motion and on appearing to the Court hearing of the Cause that said allegations are correct order is given to issue Writ of Certiorari upon the Clerk of the 4th District Court 2d Judicial District to send up forthwith a transcript perfected as in said motion required.

John C Moore
vs
William J Dunn R. Moore
& George H. Estes

And the said Appellants comes and suggests to the Court a diminution of the record in this Cause and says, that there is no transcript containing the Bill or mortgage, nor bond nor affidavit filed in said Cause and moves that the Clerk of the District Court be ordered to send up said transcript Smith & Monsarrat for Appellants

Writ is appearing to the satisfaction of the Court that said allegations are correct order is given to issue a writ upon the Clerk of the 4th District Court 2d Judicial District to send up forthwith a transcript perfected as in said motion desired.

Whereupon Court adjourned until 10 O'Clock to morrow morning

Billy Benedict
W H Moore

January Term 1859

January 7th 1859.

Court met pursuant to adjournment. Present as of yesterday

The minutes of yesterday were now read approved and signed by the judge

Allen J. Donaldson
vs
The county of San Miguel

This day the parties appeared by their attorneys and the cause is argued by John S. Watts for Appellant and R. H. Tompkins for appellee, and the court having heard the full argument on both sides takes the case under advisement

O. P. Shephard
vs
Luis Vin Geer

This case coming on to be heard upon the motion of John S. Watts Esq. to dismiss this case and this motion having been argued by the Counsel, and the Court now being fully advised in the premises, takes the same under consideration

Now the members of the Bar make the motion to adjourn Court until Friday after to-morrow it being to morrow the Anniversary of the glorious battle of New Orleans which motion is granted by the Court

Whereupon Court adjourned until to-morrow morning at 10 O Clock

Hiley Benedict
Judge

January Term 1859

January Term 10th 1859.

Court met pursuant to adjournment.
Present as on yesterday —

The minutes of the 7th inst were now read, approved and signed by the judges

Levi Spiegelberg admr.
vs
John H. Mills.

Now comes the Appellee by R. H. Tompkins his attorney and files in court a joinder of Errors in this case

Vicente Mesa,
vs
Benito Mesa.

This cause coming on to be heard upon the following motion;

The Appellee by his counsel moves the court to proceed with the appeal and final determination of this cause at this term of the court a quorum of the judges of the Supreme Court now being present —

Abbott & Tompkins for motion and the Court being divided in opinion regarding the trial of cases finally decided by Chief Justice Kirby Benedict in the lower court this case is continued to the next term of this court — Chief Justice H. Benedict will file his opinion in this in writing.

Edward Jaramillo
vs
The Territory of New Mexico

Idem

January Term 1859.

duly the parties appeared by their attorneys and this cause was to be argues by Merrill Ashurst Esq & Jo H. Knaebel Esq for Appellant and R. H. Knaebel for Appellee, whereupon Appellants Counsels suggests to the Court that there is no perfect transcript of the record in said cause and it appearing to the satisfaction of the Court that said allegation is true upon motion of R. H. Knaebel acting attorney for appellee, the Clerk is ordered by the Court to perfect the transcript in this cause and the further hearing of this cause is postponed until to morrow.

George Carter
vs
The Territory of New Mexico

Now comes R. H. Knaebel acting attorney for appellee and suggests to the Court a diminution of the record and says that there is no perfect transcript in said cause, and it appearing to the satisfaction of the Court that said allegation is true, it is ordered by the Court, that the Clerk be ordered to send up a perfected transcript in this cause

Whereupon Court adjourned until to Clock to morrow morning

Hiby. Benedict
W. L. Boone

January Term 1859

January 1st 22 1859.

Court met pursuant to adjournment
Present as of yesterday

The minutes of yesterday were now read, approved and signed by the judges

Roman Arellano
vs
Rafael Chacon

This day the parties appeared by their attorneys, and the cause is argued by Alexander M. Easton Esq. for Appellants and Merritt Austin & R. H. Dunshee Esqs for Appellee, and the Court having heard the fully arguments on both sides takes the case under advisement.

Whereupon Court adjourned until 10 O'clock to morrow morning

Kirby Benedict
W. F. Boone

January Term 1859.

January 12th 1859.

Court met pursuant to adjournment.
Present as of yesterday.

The minutes of yesterday were now read, approved and signed by the judges.

On motion of Hugh N Smith Esq. Robert J. Cowart Esq. was duly sworn in as a member of the Bar of this Court.

Vicente Mestas
vs
Benito Mestas

Now comes the appellant by Wheaton & Smith Esqs his attorney and files in Court the assignment of Errors in this case.

Estevan Jeremie
vs
The Territory of New Mexico

This day the parties appeared by their attorneys and the cause is argued by H. B. Hopkins Pettigrew & Thurmond Esqs for Appellants and R. H. Hopkins and H. D. Wheaton Esq. for Appellee, and the Court having heard the full argument on both sides, taken the case under advisement.

Whereupon Court adjourned until 10 Oclock tomorrow morning.

Kirby Benedict
W. F. Brown

January Term 1809

January 13th 1809

Court met pursuant to adjournment, present as yesterday

The minutes of yesterday were now read, approved and signed by the Judges

On motion of the Counsellors of the Bar, the case set for hearing this day is postponed until to morrow

Whereupon Court adjourned until 10 O'Clock to morrow morning

Ruby Benedict

M. J. Boone

January Term 1859

January 14th 1859

Court met pursuant to adjournment
Present as yesterday —

The minutes of yesterday were read, approved and signed by the Judges.

Facundo Pino
vs
Estevan M. Ortiz } This day the parties appeared by their attorneys, and the cause is argued by M. D. Mercur Esq in favor of Plaintiff. The further hearing of which is postponed until to morrow

Whereupon Court adjourned until 10 O'Clock to morrow morning.

Kirby Benedict
W. H. Brown

January Term 1859

January 25th 1859

Court met pursuant to adjournment
Present as yesterday

The minutes of yesterday were read, approved and signed by the Judges.

On motion of Attorney Adams Esq
Col. Wm. A. Street was admitted
as an attorney of this Court
and the other Courts of this Territory and duly sworn in as
such.

Examined Plea

" Examined all. Affd.

Jesse Ray

The parties appeared like yesterday and the cause is argued by A. H. Jones Esq. for the Plaintiff the further hearing of which is postponed until tomorrow morning

Whereupon Court adjourned until tomorrow morning at 10 o'clock

Wm. Brickell

M. Z. Boone

January Term 1859

January 17th 1859

Court met pursuant to adjournment
Present as on day before yesterday

The minutes of the day
before yesterday were read,
approved and signed by the Judges

Lucien St. Pierre
vs
The County of Saulte

By agreement of the parties this case is submitted to the Court without any arguments on the part of Counsels

Edmund Leo
vs
Edward M. Hoel

This day the parties appeared like yesterday and the cause is argued by Hugh McSmith Esq for appellant and Merrill Hakans Esq for respondent, the further hearing of which is postponed until to morrow morning.

Whereupon Court adjourned until 10 O'Clock to morrow morning

Wm Bowie

January Term 1859

January 18th 1859

Court met pursuant to adjournment

Present as on yesterday

The minutes of yesterday were now read, approved and signed by the judges

Lucius Tuttle

vs

Elcana M. Abel

This day the parties appeared like yesterday and the cause is now argued and concluded by Merritt Hotchkiss Esq. for Appellants, and the Court having heard the full argument on both sides take the case under advisement

L. L. Cunningham

vs

William L. Davis

Edward Evans & Al Esqrs

L. L. Cunningham Esq. Now come the Appellants by Smith & Hotchkiss their Attorneys and file the assignment of Errors in this Cause whereupon Merritt Hotchkiss Esq. & Judge Houghton Attorney for Appellee files the Joinder of Errors in this cause

Whereupon Court adjourned until 10 o'clock A.M. to-morrow morning

Henry Benedict

W. L. Brown

January Term 1859

January 19th 1859.

Court met pursuant to adjournment. Present as on yesterday.

The minutes of yesterday were now read, approved and signed by the Judges.

Roman Abeitia
vs
Rafael Chacon } This cause having been submitted to the court at a former day and the Court being now fully advised in the premises delivers their opinion herein. Reversed in opinion by Chief Justice Kirby Benedict.

Esteban Jemenio
vs
The Territory of New Mexico } This cause having been submitted to the court at a former day and the court being now fully advised in the premises deliver their opinion herein. Reversed in opinion by Associate Justice M. S. Bowen.

Esteban Jemenio
vs
The Territory of New Mexico } This cause came on to be heard upon the record and errors joined and was argued by

January Term 1859

Counsels and the Court being more fully advised in the premises do consider, order and adjudge that the judgment of the District Court thereof be and the same hereby is affirmed with costs. It is therefore considered by the Court that said defendant Edward Record be imprisoned for the term of one year at hard labor, and there being no penitentiary that he according to law be imprisoned in the jail of the County of Dona Ana; and that he pay the costs of this cause to be taxed and that he and his securities Merritt Reid costs. It is also ordered that execution issue therefore on said defendant and his securities

Roman Gallardo
vs
Rafael Chacon

This cause came on to be heard upon the record and argument of counsels and the Court being more fully advised in the premises do consider, order and adjudge that the judgment of the District Court thereof be and the same hereby is reversed and that this cause be remanded to the District Court with direction to dismiss the appeal and adjudge the costs of the appellant. The Clerk of this Court is hereby directed to certify this opinion and the record to the District Court

Wilson

January Term 1809

Estin Error
Richard Owens
& George & Eakes
vs
C. M. Cunningham

Dismissed

This day the parties appeared by their attorneys and this cause is argued by R. H. Rumpkin Esq. for Appellants and Mapith Graham Esq for appellee, the former bearing in mind to prosecute his appeal

Od. Shepherd
vs
Exrs Wm. Peck

Error to the Scioto Circuit Court

And now comes the parties by their counsel and the motion of the defendant to strike this cause from the docket is heard by the Court.

Whereupon, Court considered

Ordered that

Od. Shepherd
vs
Exrs Wm. Peck

Plaintiff in Error
vs
Defendant in Error
Error to the Scioto County Circuit Court

And now comes the said Plaintiff by their Counsel & thereupon this cause coming to be heard upon the record & proceedings of the Circuit Court & Assignment of Errors & Joinder thereon,

Whereupon it is considered by

January Term. 1859.

by the Court that said writ be issued as was thereon prayed to the Defendant in Error or his attorney of the Broadway of this Court returnable on next Term

It is further ordered that said Plaintiff in Error give or cause to be given notice before the first day of the next Term hereof by the Court in this cause to be approved by the Clerk

Whereupon Court adjourned until half past ten O Clock

Hiram Benedict

W. F. Boone

January Term A.D. 1859

January 20th 1859.

Court met pursuant to adjournment.

Present as of yesterday.

The minutes of yesterday were now read, approved and signed by the Judge.

A. J. Donaldson

vs

The County of San Miguel

This cause having been submitted to the Court at a former day and the Court being now fully advised in the premises delivers their opinion herein / Recorded opinion book pages by Chief-Justice Kirby Benedict.

A. J. Donaldson

vs

The County of San Miguel

This cause came on to be heard upon the record and argument of Counsel and the Court being now fully advised in the premises do consider, order and adjudge, that the judgement of the Court below be and the same is hereby reversed and also do order that the judgement of the Court be, and the same is hereby reversed and the cause remanded to the District Court to proceed therein in conformity with the opinion of the Court and that the plaintiff in error pay the costs of this Court and that plaintiff

January Term 1859

The Court by their appearance here being by the appellees, & their Counsel

Present

William J. Lewis
Richard Owens
& George H. Epes

vs

O. A. Cunningham

This day the parties appeared & the record & all papers in the cause & proceedings had in the same were argued by Merritt Johnson Esq for the Appellee and Wright M. Smith Esq for the Appellant, and the Court having heard the full argument of both sides taken the case under advisement &

Whereupon Court adjourned until this day after to morrow at 10 O'Clock

Ruby Benedict

W. F. Booze

January Term 1859

Court met January 22d 1859

Court met pursuant to adjournment

Present as on day before yesterday

The minutes of the day before yesterday were read, approved and signed by the judge

John S. Watts
vs
The county of Saratoga } This cause having been submitted to the court at a former day, and the court being now fully advised in the premises, deliver their opinion therein / Record opinion book page

by agreement Judge Burnett, and also Judge Roby Bennett files a separate opinion in this cause

John S. Watts
vs
The County of Saratoga } This cause was submitted to the Court upon the record without being argued by the counsel and the Court being now fully advised in the premises do consider in the premises and adjudge that the judgment of the District Court below be and the same is hereby affirmed with costs And it appearing by the record in this cause that Preston Rockwell and C. P. Clover are the sureties upon the appeal bond It is therefore considered by the Court that the appellees recover of the appellants and

January term 1859

and the said Richard Owen by Berrien
and C P Cleves his counsel in
this behalf, said out and excepted
and that Writs of Error in the
Therefore

William J. Dawes
Richard Owen of George B Estes
vs
T. A. Cunningham.

This cause
having been submitted to the Court
at a former day and the Court
being now fully advised in the pre-
mises thereof deliver their opinion herein
orally by Chief Justice Kirby
Benedict.

William J. Dawes
Richard Owen of George B Estes
vs
T. A. Cunningham

This cause
came on to be heard upon the record and
Errors joined and was argued by the
Counsels and the Court now being
fully advised in the premises do
Consider, order and adjudge that
the judgment of the District Court
below be and the same hereby
is reversed and that the cause
hereby is remanded to said Court
to be tried de novo and that
the appellant recover of the ap-
pellee the costs of this appeal
and that execution issue therefor
the death of Richard Owen having been suggested Leave
is granted to the parties to substitute his legal representative
W Dawes Richard Owen
and George B Estes

January Term 1859

John C. Moore } And now comes
the appellants by Smith & Forge-
ron their attorney and file the
assignments of Errors in this case
whereupon Merritt Adams Esq
& Jacob Broughton Attorneys for
Appellee file a joinder in
Errors in this case and the death of
Richard Owen having been suggested leave is granted to
the parties to substitute this legal representative

It is ordered by the Court that
C D Clever United States Marshal
be allowed for six days attend-
ance during the present Term
of this Court

It is further ordered by the Court
that Severiano Rivera be allowed
twelve dollars for six days attendance
as bailiff for the United States
during the present Term of
this Court.

It is further ordered that the
US Marshal be allowed [redacted]
cents for fuel, light & stationary
heretofore furnished for the use of
this Court (forty three)

It is further ordered by the
Court that the US Marshal be
allowed the sum of fifteen
Dollars and fifty cents which
he has been in purchasing
materials and making re-
pairs in the Courthouse, which
were damaged by fire on the
[illegible] day of January 1859

21

January Term 1859

It is further ordered by the Court that A de Hart Esqr be allowed 14 days attendance upon this Court

It is further ordered by the Court that Severiance Romer be allowed for 8 days attendance as Bailiff for this Court to be paid by the Treasury.

Whereupon Court adjourned until monday morning at 7 1/2 O Clock

Kirby Benedict
W. F. Boone

January Term 1859.

January 24th 1859

Court met pursuant to adjournment
Present as on day before yesterday

The minutes of day before yesterday were read approved and signed by the Justices.

Whereupon Court adjourned until the 3d Monday of February

It is ordered by the Court that the Terms of the respective District or Circuit Courts for each County in this Territory shall be held at such Times and Places in said Counties as may be fixed and designated by the Legislature of this Territory now in Session and that the United States Court for the transaction of United States business shall be held at the Town of Dacotah for the First Judicial District at the Town of Flora for the Second Judicial District and at the Town of Pekin Grove for the Third Judicial District at such Times as the said Legislature may fix for the holding of the District Courts in the said Counties first mentioned.

Whereupon Court adjourned until the 3d Monday in February

Hiley Parrott
M. F. Boone.

January Term 1859

February 14th 1859

Court met pursuant to adjournment

Present:

Hon. Kirby Benedict Chief Justice

A. De Marle Clerk

Chief Justice Kirby Benedict having received information from Bonne Arrowsmith Justice of this Court that he will not attend a session of the Supreme Court during this month this Court therefore stands continued until the second Day of March 1859

January Term 1859.
March Session 1859
Commissioners proceedings Re appointments
Present:
Hon. Henry Perkins Chairman
Attest Orrin Clerk

(The Corp having no business to transact adjourned into Session Sine die
Orrin Clerk)

January Term 1859
March 8th 1859

Present My Gibby Bennett Chief Justice
W. E. Boone Associate Justice
H. Sneathen Clerk

On motion of Judges now being assembled it is ordered that as much of the order of the 2d inst as continued this Court until the 14th inst. be so modified as to continue to this day

It is now ordered and fixed by the Judges that the times and places for holding the United States District Courts in the several Districts of this Territory for the commencing, hearing and carrying to a final conclusion of all suits and causes arising under the laws of the United States within the respective Districts shall be as follows!

In the first District at Sawaja in the County of Sarpy the second Mondays in March and the first Mondays in September in each year

In the second District at Kanesville the seat in the County of Davis on the first Mondays of April and fourth Mondays in September in each year

In the third District at the town of Plattsburgh in the County of Clinton on the 4th Monday of April and 3d Monday in October in each year

said Courts to continue in session until the business shall be disposed of and to adjourn at said times and places unless otherwise ordered

All causes now pending in said Courts in the aforesaid Districts shall be heard and d[illegible]

January Term 1889
Division as said times and places respectively.

It is further ordered that the times and places for holding District Courts in the several counties in this Territory shall be as follows:

In the county of San Miguel at the town of San Miguel on the first mondays of March and fourth mondays of August in each year

In the county of Socorro at the town of Socorro on the second Monday of March and first Monday of August in each year

In the county of Rio Arriba in the town of Los Luceros on the 4th Monday in March and third Monday in September in each year

In the county of Taos at the town of Ranchos de Taos on the first mondays of April and at the Monday of September in each year

In the county of Santa Ana at the town of New Laredo on the third Monday of April and second Monday of October in each year

In the county of Bernalillo at the town of Albuquerque on the 4th Monday of April and 3d Monday of October in each year

In the county of Valencia at the town of Tome on the second Monday of May and

by

January Term 1809

This year the 2d Monday of October

In the County of Jefferson at the Town of Louisville the 3d Monday of May and first Monday of November in each year

For the County of Bourbon at the Town of Lexington and this year the Spring Term upon the 3d Monday in May and the Fall Term, each year on the third Monday of November

Said Courts shall Commence in session and the business thereof shall be fully disposed of, or the Jurys shall be required to attend to Terms in a different County

Whereupon Court adjourned until Court in course

Hiby Benedict

W. T. Boone

Supreme Court, July Term, 1859.

July 4th 1859.

At a regular Term of the Supreme Court of the Territory of New Mexico, begun and held at the Court House, in the city of Santa Fé, on the first Monday of July A. D. 1859.

Present:
Hon. Kirby Benedict, Chief Justice of New Mexico
" Wm. G. Blackwood, Associate Justice
Charles P. Clever Esq. U.S. Marshal.
Samuel Ellison. Clerk.
Hon. Hugh N. Smith. Attorney General for the Territory.

In consideration of this being the anniversary day of our national Independence, on motion of Attorney General, Smith, it is ordered, that all business in this Court stand suspended during this day, and that this Court adjourn until to-morrow morning at 10. O'clock.

Kirby Benedict

Wm. G. Blackwood

Supreme Court, July Term 1859.

3rd Day. July 5th 1859.

Court met pursuant to adjournment.
Present as of yesterday.
The minutes of yesterday were read, approved and signed by the Court.

Whereupon court adjourned until Thursday morning at 11 o'clock.

Wiley Benedict
Wm. G. Bradshaw

4th Day. July 7th 1859.

Court met pursuant to adjournment.
Present as on Tuesday.

The minutes of Tuesday were read, approved and signed by the court.

Jacob Mayer, Admr. of A.R. Bigg, deceased
vs.
Iron H. Brook & Ald.
} In Supreme Court.

In this Case the Counsel for the plaintiffs in Error suggested Material Omissions in the record of the proceedings in said Case, and pray for a Certiorari to the Clerk of the third Judicial District Court, to certify up to this Term of the Supreme Court a more perfect record, which is granted.

Iron H. Harris in Error
vs.
The Territory of New Mexico
} In Supreme Court.

The Attorney General

Hugh A. Smith moves the Court to strike this case from the Docket, for the reason, that there is no certificate, signature nor seal of the Clerk of the District Court authenticating said cause; which motion being considered and understood by the Court, it is sustained, and said cause ordered to be stricken from the Docket and leave granted to withdraw the papers in the cause

Whereupon Court adjourned until Monday July 12th at 10. o'clock, A. M.

Philip Benedict
W. T. Boone
Wm. G. Blackwood

Monday July 12th 1859.

Court met pursuant to adjournment.
Present as on Thursday and also the Hon. W. T. Boone, Associate Justice.
The minutes of Thursday, were read approved, and signed by the Court.

Maria Encarnacion Romero
Def.
Petition in Chancery.
Jaramillo Ulibarri
Defendant comes the Defendant in Error by, Hon. Delano his Attorney and files the joinder in Error in this Cause.

Francisco Lucero
Def.
The Territory of New Mexico.
This cause by agreement of the Solicitors in the said cause is set for Wednesday the 13th inst. by consent of the Court.

Supreme Court July Term 1859.

George Carter
vs.
The Territory of New Mexico

This Cause came on to be heard and after the opening argument of Mr. Ashurst for plaintiff in Error and the argument of Messrs. Hopkins and Smith for defendants there not being time to conclude the arguments

Court adjourned until 9 o'clock tomorrow A.M.

Kirby Benedict

W. F. Moore

Wm. G. Blackwood

July 14. Day. July 13th. 1859.

Court met pursuant to adjournment.
Present as on yesterday.
The minutes of yesterday were read, approved and signed by the Court.

George Carter
vs.
The Territory of N. Mex.

Appealed from Santa Fé County.

The argument of this cause is now concluded by Mr. Ashurst, and the cause is taken under advisement by the Court.

Francisco Leonardo.
vs.
The Territory of New Mexico

Appealed from Bernalillo County.

Supreme Court, July Term 1859.

And now on this day comes the parties by their Counsel, and this cause being argued by Counsel on both sides, and the Court not being fully advised as to their judgment herein, takes this cause under advisement.

Whereupon, Court adjourned until to-morrow morning at 9 o'clock A.M.

Henry Benedict

W. F. Bond

Wm. T. Blackwood

10 Day. July 14th 1859.

Court met pursuant to adjournment. Present as on yesterday.

The minutes of the proceedings of yesterday were read approved and signed by the Court.

Oliver L. Shephard
vs. } In Error.
Lewis W. Leech

And now comes the defendant in Error by Bond and Watts, his Attornies, and now file their motion of the defendant in Error for the dismissal of this case, for the reason, that no assignment of Error has been made and no affidavit has been filed in the Court below for an appeal in this cause.

Oliver L. Shephard
vs. } In Error.
Lewis W. Leech

And comes the plaintiff in Error by Messrs Wheaton & Smith, his Attorneys, and the defendant in Error by Messrs. Bond and Watts, his attorneys, and

Supreme Court, July Term 1859.

the motion to dismiss this cause being now argued by Counsel and fully considered by the Court, is now overuled

Olivier L. Shepherd, P.S. } On Error
v.
Lewis W. Leckel }

And now comes the defendant in Error by Baird and Watts, his attorneys, and files the joinder in Error in this cause -

José Romero. P.S. } Appealed from Taos County
v.
The Territory of New Mexico }

This cause came on to be heard on the motion of Attorney General, Smith for defendant, to dismiss the same for the reasons that the writ of Error granted by any Judge, Justice or Court having competent power to grant such - & Because there is no Appeal taken according to law. And the Court not being fully advised in the premises, take the same under advisement -

Olivier L. Shepherd, P.S. } Pet Error -
v.
Lewis W. Leckel }

This cause by agreement of Counsel and the assent of the Court is set for argument on Friday next -

Levi Spiegelberg Admr of Elias Spiegelberg, P.S. } Appealed from Santa Fé County
v.
Lohn H. Smith }

This cause by agreement of Counsel and the assent of the Court, is set for argument on Friday next -

Supreme Court. July Term 1859.

4 Antonio Olletzas Ortiz - }
U.S. } Appealed from Santa Fé County.
Jesus Ma. Baca y Salazar }

This cause by agreement of Counsel and assent of the Court, is set for argument on Tuesday next.

9 Miguel Senez Romero }
U.S. } Appealed from Santa Fé County.
Juan Sandoval }

This cause by agreement of Counsel and assent of the Court, is set for argument on Saturday next.

7 John C. Moore }
U.S. }
William L. Dacy }
Richard Owens & } Appealed from 2d Judicial District.
George W. Cates }

This cause by agreement of Counsel and assent of the Court is set for argument on Saturday next.

8 Maria Encarnacion Romero }
U.S. } Appealed from 1st Judicial District.
Eugenia Chaves }

And now on this day, by agreement of the parties, by their attorneys, this case is remitted to the Court, without argument, and the Court not being sufficiently advised of the premises, now take the same under advisement.

9 Vicente Mestas }
U.S. } Appeals from 2d Judicial District.
Benito Mestas }

This cause by agreement of Counsel and assent of the Court is set for argument on Monday next.

91.

Supreme Court. July Term 1859.

Pablo de Herrera & others
vs.
10. José Miguel Muñiz } Appealed from Santa Fé County.

And now comes this Appellant by Messrs Smith & Wheaton, his attorneys, and files in court the assignment of Errors in this cause— And by agreement of Counsel, and assent of the Court, this cause is set for argument on Monday next

Salvador Garcia
vs.
12. Mariano Rodriguez } Appealed from 2d. Judicial District.

This cause come on to be heard upon the motion of the defendant in Error, to strike this cause from the docket, and the Court being fully advised in the premises, and being of opinion that said cause is improperly upon the docket of this Court, It is therefore ordered and adjudged, that said cause be, and is hereby stricken from the docket of this Court.

James L. Johnson
vs.
Pablo Montoya } Appealed 3rd. Judicial District.

14. This cause by agreement of Counsel and assent of the Court, is set for argument on Friday next.

Vicente Bustos
vs.
1. Benito Bustos } Appealed from 2d. Judicial District.

This cause by agreement of Counsel and assent of the Court, is set for argument on Monday next.

Ordered that Court adjourn until 9 o'clock to-morrow Morning

Hiddy Benedict

D. F. Boone

Wm G. Blackwood

11. Day. July 15th 1859.

Court met pursuant to adjournment Present as on yesterday.

The minutes of the proceedings of yesterday were read, approved and signed by the Court.

Jose Romero
vs
The Territory of New Mexico } Appeal from Taos County.

This cause having been submitted to the Court at a former day, on the motion of Attorney General, Smith, for defendant in Error to dismiss the same, and the Court now being fully advised in the premises, overrule the motion to dismiss from the docket and cause — Associate Justice Blackwood dissenting. And now this cause by agreement of Counsels is set for argument on Tuesday next.

14. Antonio Matias Ortiz
vs
Laws Nic. Brocq & Salazar } Appeal from Santa Fé County.

And now comes the defendant in Error by his Attorney Thos. Bird & Preston, and files in Court a Motion to dismiss this cause

Supreme Court. July Term 1857.

Olivier L. Shepherd &
B. S. Eaton
Lewis W. Peck. } Appeal from Socorro County

And now come the parties by their attorneys, and this cause being now at issue and set for hearing, is now argued by Messrs Smith & Barton for Plaintiffs in Error and by Messrs Bail & Watts for defendant in Error, and the argument of Counsel being now concluded this Cause is now submitted to the Court, and the Court not being sufficiently advised in the premises, now take this cause under advisement

Whereupon Court adjourned until 10 o'clock to-morrow A.M.

Hiram Benedict
W. J. Brown

Wm. G. Blackwood

Court met pursuant to adjournment—
Present as on yesterday—
The minutes of the record of yesterday were read approved and signed by the Court—

Ordered by the Court.

That all transcripts of Records hereafter sent to this Court, shall be prepared in the following form. to wit,

1st They shall be upon paper of uniform size, of a good quality of Foolscap, with a blank margin one and a half inches wide, on the sides of each page.

2nd The pages of the transcripts shall be numbered and shall be written upon but one side of the leaves.

3rd Each transcript shall be prepared with an alphabetical index to its contents, specifying the page of each separate paper, order or proceeding, & shall leave at least one blank or fly sheet Cover

4th. Marginal notes of each separate paper, order or proceeding shall be made throughout the transcript.
5th. The transcript shall be fastened together by ribbon or tape so that the same may be severed, and every part conveniently read.
6th. The transcript shall be written in a fair, legible hand writing, and each paper or order shall constitute at least one paragraph.
7th. No Record which fails to conform to these rules shall be received or docketed by the Clerk of this Court.
8th. For the purpose of correcting any error or defect in the transcripts of the Records from the Court below either party may suggest the same to this Court, and upon good cause shown, obtain an order that the proper clerk certify to this Court the whole or a part of the Record as may be required.

Francisco Granada
vs.
The Territory of New Mex.
} Appeal from Bernalillo County.

15,

This cause having been argued by Counsel, and submitted on a former day of this Term, and the Court now being fully advised as to what judgment should be rendered herein, It is considered ordered and adjudged by the Court, that the judgment of the Court below, be and hereby is affirmed with costs, It is also ordered, that judgment of the Court below be executed upon the defendant, and that a mit of Procedendo, issue from this Court to the Court below.

And the defendant not having appeared in this Court to receive judgment herein, It is further ordered and adjudged, that the Territory recover of the defendant and

his securities in this appeal the sum in the Court below recovered, as also, the costs laid out and expended in said Court.

as also, the costs of this appeal in this Court, for the collection of the same.

On this cause leave is given to associate Justice Boone, to file the written Opinion of the Court, as als, to the other Justices to file separate Opinions.

Levi Speigelberg admr.
of Elias Speigelberg deceased
vs.
John Henry Mink } Appeal from Santa Fé County.

This cause was argued by Hon. W. Ashurst for complainant in Error, and Hon. R. H. Tompkins for defendant in Error, and the Court not being fully advised in the premises as to the judgment they should render, take the same under advisement.

Whereupon Court adjourned until, Monday next, at 10, O'clock A. M.

Kirby Benedict
W. F. Boone
Wm. G. Blackwood

Mon. Day. July 18th 1859.

Court met pursuant to adjournment.
Present as on Saturday.
The minutes of the proceedings of Saturday were read and approved by the Court.

Supreme Court July 18th 1859.

14. James L. Johnson
U.S.
Pablo Montoya } Appeal from Bernalillo County

This Cause was argued by Messrs. Smith and Ashurst for complainant in Error, and Wm. A. M. Tompkins for defendant in Error, and the Court not being fully advised, as to what judgment should be rendered herein, take the same under advisement.

At the meeting of the Supreme Court this afternoon the following orders were read by Chief Justice Benedict, And communicated by the Court.

Whereas, the Hon. John S. Phelps, now on a visit from his home in Missouri, to this Territory, in pursuance of an invitation from the General Assembly, and is now leaving for his Residence in his own State, We, as one of the Branches of the Territorial Government, desiring to manifest our high esteem for his distinguished character, as a man, Statesman and patriot, and his affable, instructive and honorable deportment during his visit among us, as also, to afford ourselves and the Gentlemen associated with this Court an opportunity to bid a friendly adieu to the guest of the Territory, with their best wishes for his future advancement, usefulness and Renown, we do now adjourn this Court until to-morrow morning, at 10 O'clock.

Ordered, further; that the Clerk enter these proceedings upon the Record of this day, and present a Copy of the same, with Seal of the Court impressed thereon, to the Hon. John S. Phelps.

Kirby Benedict

W. H. Moore

16th day July 19th, 1859.

Court met pursuant to adjournment.
A Quorum being present.
The minutes of yesterday were read & signed by the Court.

1. John C. Moore
v.s.
William L. Davey,
Richard Owens &
George H. Estes. } Appealed from Rio-Arriba County.

This cause having been set for argument at a former day, was now submitted to the court by argument of Counsel, without argument, Munroe & Tompkins for appellant and Delahunt for appellee and the Court not being fully advised what judgment should be rendered herein take the same under advisement.

3. Levi Spiegelberg Adm of
Elias Spiegelberg deceased
v.s.
John Henry Mock } Appealed from Santa Fe County.

And now on this day came again the parties by their counsel, and this cause having been argued upon a previous day, and taken under advisement, and the Court now being fully advised as to the judgment that ought to be rendered, therein the Court deliver their opinion by Chief Justice Slory Benedict.

Therefore, It is considered, ordered and adjudged by the Court, that the judgment of the Court below in this cause, be and hereby is affirmed with costs. It is further ordered, that the Clerk issue process to the Court below to execute judgment of said court to be executed.

It is further ordered and adjudged, that the appellee Minks recover of the appellant in this court his costs in this appeal laid out and expended, and that execution issue for the same.

Whereupon court adjourned until to-morrow morning at 9 o'clock.

Kirby Benedict
W. F. Boone

15th Day, July 20th 1859.

Court met pursuant to adjournment.
A Quorum being present.
The minutes of yesterday were read, when on motion
signed.

John C. Moore
vs. Appealed from Rio Arriba County.
William A Davy
Richard Owens &
George W. Coates

And now, on this day, come again the parties, by their counsel, and upon their agreement, the submission of this cause, made on yesterday, is hereby set aside and made null.

And thereupon the cause was heard in argument, on the part of appellant, and the counsel for appellee, declining to make any argument, the court take the same under advisement.

It appearing to the court, that Simeon Ino. Sena, Esq., Sheriff for the County of Santa Fé and Territory of New Mexico,

Supreme Court. July Term 1859.

in which County the Supreme Court of N. York now holding its Session, is not in attendance on this Court, neither in person nor by deputy

It is therefore ordered by the Court that a rule be made against said Sheriff, to show cause if any he has, on Friday Morning next at 9 O'clock, why an attachment should not issue against him for neglect of duty to attend on this Court.

It is further ordered, that a copy of this rule be served on the said Sheriff

Whereupon Court adjourned until Friday next at 9 O'clock A. M.

Hiram Benedict

W. J. Boone

U. S. Dy. July 22d 1859.

Court met pursuant to adjournment

Present the Hon. Judge Presents,

The record of the proceedings of Wednesday was read, approved and signed.

James Maria Henry Baer, Sheriff of Lancaster County, failing to appear in obedience to the rule of this Court, served upon him, to show cause if any he has, why attachment should not issue against him for neglect of duty;

It is therefore Ordered by the Court, that an attachment issue against the body of James Maria Henry Baer, directed to the United States Marshal, returnable to-morrow at 9 O'clock, P. M. with authority to take Bail in the sum of Three Hundred Dollars.

Supreme Court. July Term 1859.

Francisco Leonardo
vs.
The Territory of New Mex

15.

The judgment of the court having been given at a former day and leave granted to file the written opinion in this case, Associate Justice Boone, now presents the written opinion of the court in this cause

Whereupon Court adjourned until to-morrow at 4. O'clock P. M.

Kirby Benedict

J. H. Boone

18th Day July A.D. 1859.

Court met pursuant to adjournment. A quorum being present.

The record of the proceedings of yesterday was read, approved and signed.

The Territory of New Mexico
vs.
Jesus Mª Sisneros Sheriff
} Contempt.

On this day the defendant was brought into court in the custody of the Ust. Marshal, and made his verbal answer to the attachment whereupon the further hearing of this matter was continued until Wednesday next at 10. O'clock A. M.

Jacob Mayer Bibo,
& Joseph Bugg deceased
vs.
Wm. H. H. Brooks
} Appeal from Bernalillo County

307. Supreme Court. July Term 1859.

In this case plaintiff in Error by his Counsel suggests an additional Diminution of the record from the District Court for the third District, in this, to wit, That no copy of the judgment rendered in the Court below is contained in said record and asks for an Alias writ of Certiorari to the Clerk of the said Court which was granted

James C. Johnson
&c.
Pueblo Montoya } Appeal from Bernalillo County

This cause came on to be heard upon the record and assignment of Errors and joinder therein, and having been argued and submitted at a former day of this term, now at this day, the Court being fully advised in the premises, as to what Judgment ought to be rendered in said cause,

It is therefore ordered and adjudged that the decree of the Court below, be and is hereby affirmed, with Costs, and that Execution issue therefor

Opinion of the Court delivered by Associate Justice Boone, Chief Justice Benedict dissenting.

Oliver G. Shepherd
&c.
Louis W. Geck. } Appeal from Socorro County.

This cause having been argued and submitted at a former day, and the Court now being fully advised as to what judgment should be rendered herein It is considered, Ordered and adjudged by the Court, that the judgment of the Court below be reversed and that this cause be remanded to the District Court of the County of Socorro, Third Judicial District, with instructions, that the Demurrer to the plea in abatement therein be overruled

and that the cause abate as to the costs of the plaintiff, (defendant in Error) and that the costs of this Court be taxed against the said plaintiff (defendant in Error) and that Execution issue therefor. Chief Justice Benedict dissenting.

Whereupon Court adjourned until tomorrow morning at 10 o'clock A.M.

Kirby Benedict

Wm. G. Blackwood

July 21st.

Court met pursuant to adjournment.

Present.

Chief Justice Benedict &
Associate Blackwood.

The proceedings of the former day were read, approved and signed by the Court.

George Hunter
vs.
The Territory of New Mexico } Appeal from Santa Fe County

This cause heretofore been argued and submitted to the Court at a former day of this term, and now at this day the Court being fully advised as to what judgment should be rendered herein. It is ordered and adjudged that the judgment of the Court below be and the same is hereby affirmed, and that Execution issue from this Court for the judgment of the lower Court and also the costs of this Court.

The opinion of the Court delivered by Chief Justice, Kirby Benedict.

Supreme Court, July Term - 1857.

On motion of R. H. Tompkins Esq. Wm. H. Davidson, was admitted as an attorney and Counsellor of this Court, who was thereupon duly sworn as such.

John C. Moore }
U.S. }
Wm. A. Dana } Appeals from Rio Arriba County.
Richard Owens &
George N. Cates }

This cause having been argued and submitted to the court at a former day of this term, and the court now being fully advised as to what judgment should be rendered herein - It is ordered and adjudged, that the judgment of the court below, be and the same is hereby reversed, with costs of Supreme Court, and the cause remanded to the court below, with directions to proceed in said cause in conformity with the opinion of this court - and that execution issue from this court for the costs thereof.

Leave is granted to Chief Justice Benedict to file the written opinion of the court in this cause in vacation.

James L. Johnson }
U.S. } Appeals from Bernalillo County.
Pedro Montoya }

In this cause leave is granted to Mr. Justice Boone to file the written opinion of the court in vacation, and also to Chief Justice Benedict to file dissenting opinion.

On motion of Hugh N. Smith Esq. Wm. Phileman Herbert was admitted as an Attorney and Counsellor of this court, who was thereupon duly sworn as such.

Supreme Court, July Term 1859.

Oliver L. Shepherd
vs.
Lewis H. Gelt } Appealed from Socorro County.

And now comes the defendant in Error by Watts and Baird, his Attorneys, and files the motion of the defendant for a rehearing of this cause, and after argument had, the Court being divided in opinion upon the motion, the same is overruled; And thereupon the defendant moves the Court for an appeal in this cause, to the Supreme Court, and it appearing to the Court by the record in this Case, and affidavit filed herein, That the amount in controversy, is of the value of Two Thousand five hundred dollars, an appeal is now granted in this Case, upon the filing within thirty days with the Clerk of the Supreme Court of this Territory an appeal Bond in the sum of three hundred dollars to be approved by said Clerk, conditioned for the prosecution of said appeal and payment of all the costs if the judgment of the Supreme Court of the Territory of New Mexico shall be confirmed by the Supreme Court of the United States.

Francisco Leonardo
vs. } Appealed from Bernalillo County.
The Territory of New Mexico

In this cause leave is granted Chief Justice Benedict and Mr. Justice Blackwood to file their written opinion in vacation.

The Territory of New Mexico,
vs. } Contempt.
Juan N. Pino y Baca

The defendant in this cause having failed to appear and answer in obedience to the order of this Court at a former day of this term

It is therefore ordered by the Court, that an attachment issue against the body of the defendant.

directed to the United States Marshal, returnable at the next term of this court with authority to take bail in the sum of five hundred dollars - for neglect of duty in not attending on this court -

It is ordered by the Court that the Ud. Marshal be allowed the sum of thirty three dollars and thirty seven cents - for stationery furnished for the use of the court during the present term thereof.

It is further ordered that the Ud. Marshal be allowed fifteen dollars for three days attendance on this court during the present term thereof.

Maria Concepcion Romero
vs.
Segunda Alleños

This cause having been argued and submitted at a former day of this term, now at this day, the court being fully advised, as to what judgment ought to be rendered herein, It is ordered and adjudged by the Court, that the decree of the Court below be and hereby is reversed with costs,

It is further ordered that this cause be remanded to the District court with directions to overrule the demurrer to said Bill, and require the said defendant to answer thereto and proceed with said cause to a final hearing,

It is further ordered that Segunda Alleños pay the costs of this appeal, and that execution issue therefor from this court -

It is further ordered that leave be granted to Chief Justice Benedict, to file an opinion, the written opinion of the court in this case -

Supreme Court July Term 1839.

It is ordered by the Court that Samuel Ellison Clerk of this Court be allowed thirty dollors for seven days necessary attendance at this term of the Court

It is ordered by the Court, that all causes and motions not otherwise disposed be continued until the next of this Court

Whereupon Court adjourned until to morrow at 9 O'Clock A.M.

Hairy Benedict

Wm G. Blackwood

July 28th

The Court met pursuant to adjournment Present as on yesterday -

On motion of Alexander M. Jackson Esq. Atty of Iowa Territory was admitted as an Attorney and Counsellor of this Court, who was thereupon duly sworn as such

Ordered by the Court that the Clerk, upon a roll in which all Attorneys and Counsellor at Law admitted to practice in the Courts of this Territory shall register their names

Whereupon Court adjourned until Court in course -

Hairy Benedict

Wm G. Blackwood

Supreme Court January Term 1st Day 1860.

January 2d

At a regular term of the Supreme Court of the Territory of New Mexico, begun and held at the Court House in the City of Santa Fé, on the first Monday of January 1860.

Present

Hon. Henry Dodrill Chief Justice of said Territory of New Mexico —
" William G. Fleming, Associate Justice
Charles P. Clever, U.S. Marshal
Jesus Maria Baca y Salazar Sheriff
of Santa Fé County of Santa Fé,
Samuel Allison Clerk

On motion:

Ordered that the Clerk of this Court enter upon the records of this Court, so much of the resolutions of the District Court of September 14th 1859. as relates to the worth and character of the Hon. Hugh N. Smith late Attorney General of this Territory and the same are hereby adopted by this Court

Ordered, that in honor of the same and character of the Hon. Hugh N. Smith, deceased this Court do now adjourn till to-morrow at 11. o'clock A.M.

1st That this Bar has learned with emotion of sincere regret the decease of their brother and friend Hugh N. Smith late Attorney General of the Territory of New Mexico

2d That by this event the Territory has been deprived of an efficient and faithful officer, this Court one of its most learned counsellors, this Bar one of its most talented members, and the community one of its most valuable citizens

3d That the members of this Bar, have their sincerest sympathies to the general sadness most unfeignedly felt with which the decease of a friend and brother stranger

Supreme Court, January Term 1st Day. 1839.

To define the responsible duties of the general Circuit Courts confine attorneys to their bounds; to the dignity and courtesy, which characterize the professional bar and to the honorable and generous principles which distinguish them as a man.

4. That this Court offer their sincere condolence to the friends and relations of the deceased on the sad bereavement inflicted by this visitation and deplorable event.

The Hon. Charles Ross appointed Jesse Cortez Bailiff of this present term of the Supreme Court, who appeared and was duly sworn accordingly.

Kirby Benedict

Wm. G. Blackwood

January 3d 2d Day. 1839.

Court met pursuant to adjournment.

Present as yesterday.

William H. Harris.
vs.
The Trustees of St. Mrs.

By agreement of this cause is set for argument on Wednesday next.

Charles Mayer admr of
James Begg.
vs.
William H. Brooks Mast. of

By agreement this cause is set for argument on Thursday next.

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Supreme Court. January Term 2d Day 1860.

~~Intervention Court adjourned until to-morrow~~ ~~10~~ A. M.
Absent ~~J.~~ J.

Vicente Ulestas
vs. } Appeal
Benito Ulestas

And now on this day come the appellant by his Attorny, and moves the court for a continuance of this cause on the following motion- "Defendant moves the Court to continue this cause for the reason that the Judge of the third judicial District is absent, and the judge who tried the case in the Court below is now a member of this Court, thereby leaving but one judge upon the Supreme bench, who under the statute can decide thereon"

Ordered, that Court adjourn until to-morrow 9 O'clock A. M.

Kirby Benedict

Wm G. Mackworth

Supreme Court, January 4th 3 P. Day 1860.

Court met pursuant to adjournment.
Present as yesterday.

Chief Justice Benedict being necessarily engaged in the Examination of
in a Criminal prosecution.

Ordered that Court adjourn until Tuesday at 10. O'clock A. M.

Kirby Benedict

Wm G. Mackworth

Supreme Court, January 5th 4th Day. 1860.

Court met pursuant to adjournment.

Present as of yesterday.

4. Vicente Martas
A.D.
Benito Martas

This cause coming up upon the motion of the Appellant for a continuance made at a former day of this term, and after the arguments of Counsel and the Court not being fully advised in the premises, take the same under advisement.

Ordered that Court adjourn until to-morrow at 11. Oclock A.M.

Wm. G. Blackwood

Supreme Court, January 6th, 5th Day. 1860.

Court met pursuant to adjournment.
Present as on yesterday.

Chief Justice Brodie being necessarily engaged in the examination of a criminal prosecution.

Ordered that Court adjourn until to-morrow at 10, Oclock A.M.

Wm. G. Blackwood

Supreme Court, January 9th A. Day. 1860.

Court met pursuant to adjournment.
Present as of yesterday.

Chief Justice Benedict being necessarily engaged in the examination of a criminal prosecution -
Ordered, that Court adjourn until Monday next at 10. o'clock A.M.

Hiddy Benedict
Wm. S. Blackwood

Supreme Court, January 9th 7th Day. 1860.

Court met pursuant to adjournment.

Present as of Saturday last.

Jacob Mayer adm.
v.s.
Wm. S. H. Brooks, U.S.A.

And now on this day come the parties by their Counsel, Messrs. Street and Skelton, and file their motion for the dismissal of this cause.

Ordered that Court adjourn until to-morrow at 10. o'clock A.M.

Hiddy Benedict
Wm. S. Blackwood

Supreme Court, January 10th 8th Day. 1860.

Court met pursuant to adjournment.

Present as on yesterday.

Messrs Joseph A Finley Esq. & Leonidas Smith Esq. having applied to this Court to be admitted as Attornies and Counsellors at Law, and the Court being too much occupied to examine them in person as to their qualifications, appoint Messrs T. H. Hopkins W. A Street and Theodore D. Wheaton Esqs. practising Attornies before this Court, as a Committee of Examination.

The Committee appointed to examine Messrs Jos. A. Finley and Leonidas Smith Esqr. Applicants for license to practise before this Court, now submit the following Report - to wit:-

"To the Honorable Supreme Court now sitting.

The undersigned appointed by order of Your Honorable Court to examine Jos. A. Finley Esq & Leonidas Smith Esq touching their learning and ability in the Law, having performed that duty beg leave to report that they are well sufficiently qualified in our opinions to enter upon the practice of the Law, And recommend them to the Court for license, should Your Honors think proper to grant the same - Respectfully submitted this 10th Jany 1860.

Thompson H Hopkins Chairman
William A Street
Theodore D Wheaton.

Supreme Court January 10th 8th Day 1860.

Henry Mereene, an Alien and native of Great Britain, a free white person, this day came into Court and proved to the satisfaction of the Court, that he made in the United States District Court for the First Judicial District for the Territory of Utah, two years ago the requisite declaration of his intention to become a citizen of the United States, that he has resided in the United States for five years last past, and in the Territory of Nevada at least two years last past, and that during all that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. And thereupon, the said Henry Mereene, in open Court here made solemn oath, that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign Prince Potentate, State or Sovereignty, and particularly all allegiance and fidelity to Victoria, Queen of Great Britain, whereof he was a subject before. Whereupon it is ordered by the Court that a Certificate of Naturalization be issued to him on payment of the Costs of this application.

On motion of Jno Sheadon & Princeton Esq Joseph A. Hinkley Esq. is now duly sworn as an Attorney and Counsellor at Law to practice in any of the Courts of this Territory.

On motion of Jno. Thomas H. Hopkins, Leonidas Smith Esq. was duly sworn as an Attorney and Counsellor at Law to practice in the several Courts of this Territory

Supreme Court. January 10th 8th Day 1860.

Wm H. Henry.
vs.
Secretary of New Mexico
} Appeal from 3d Judicial District.

And now on this day come the parties by their Counsel, and Messrs Hopkins and Wheaton Counsel for Appellant having Concluded their arguments, and time not being time for the Counsel for the Appellee to proceed with his argument. it is continued until to-morrow at

Ordered that Court adjourn until to-morrow at 11 Oclock A. M.

Hiley Benedict

Wm F Blackwood

Supreme Court. January 11th 9th Day. 1860

Court met pursuant to adjournment.
Present as on yesterday.

William H. Henrie
vs.
Secretary of New Mexico
} Appeal from 3d Judicial District.

And now on this day came again the parties by their Counsel, and William A. Hart Esq. Counsel for Appellee having Concluded his argument in this Cause, and time not being time for the Counsel for Appellant to finish their argument

Ordered that Court adjourn until to-morrow at Oclock A.M.

Hiley Benedict

Wm F Blackwood

Supreme Court January 12th A.D. 1860.

Court met pursuant to adjournment.

Present as on yesterday.

William H. Harris
vs.
Territory of New Mexico } Appeal from 3rd Judicial Dist.

And now on this day came again the parties by their Counsel and Seth Baird having concluded his argument for the Appellant, and the Court not being fully advised as to the judgment they ought to render in this cause, take the same under advisement.

Ordered that Court adjourn until to-morrow at 2 o'clock P.M.

Henry Benedict
Wm. G. Blackwood

Supreme Court January 13th A.D. 1860.

Court met pursuant to adjournment.

Present,

Hon. Wm. G. Blackwood, Associate Justice
Hon. Wm. Pelham, Attorney General
Hon. Miguel Otero, Clerk

Hon. Chief Justice Benedict being indisposed could not be present.

Ordered that Court adjourn until Monday next at 11 o'clock A.M.

Henry Benedict
Wm. G. Blackwood

Supreme Court January 16th 18th 1861.

Court met pursuant to adjournment.

Present

Hon. Elisha Benedict, Chief Justice of the State of Iowa.
" Wm. G. Blackwood, Associate Justice.
Jesse Bee, Grace J. Hodgson, Sheriff.
Samuel Olivier, Clerk.

Wm. H. Merrick.
vs. } Appealed from 3rd Judicial District.
The Sheriff of Scott.

And now on this day come again the parties by their Counsel and this cause having been argued on a previous day of this Court and taken under advisement, and the Court now being fully advised as to the judgment that ought to be rendered herein, the opinion of the Court is delivered by Chief Justice Benedict.

It is, therefore, ordered, adjudged and decreed by the Court, that the judgment of the Court below in this cause be and same is Reversed and that the said Wm. H. Merrick be discharged from custody and go hence without and the Sheriff pay costs as for which he may be liable. Opinion in this cause to be filed in vacation.

4. Wm. H. Merrick et al
vs. } Appealed from 3rd Judicial District.
Wm. H. Merrick, Sheriff &c.

And now on this day come again the parties by their Counsel and the matter of this cause having been argued by the Counsel at a former day of this term, the Court now announces themselves as disabled from opinion and hold the matter over for further consideration.

Wm. H. Merrick Esq. praying affidavit to this Court to be admitted as an Attorney and Counsellor at Law, and the Court being now satisfied of the good character of the said Wm. H. Merrick as such Attorney and Counsellor at Law, it is ordered that he be admitted as such Attorney and Counsellor at Law in this Court upon taking the oath prescribed by law.

Supreme Court. January 16th 18th Day 1860.

Edward Lynch, an alien, and native of Great Britain personally appeared before the Supreme Court of the Territory of New Mexico, sitting in the City and County of Santa Fé, and declared on his Solemn oath that it is his bona fide intention to become a Citizen of the United States, and to renounce forever all allegiance and fidelity to every foreign Prince, Potentate, State and Sovereignty whatsoever and particularly all allegiance and fidelity to Victoria Queen of Great Britain, whose subject he now is.

Ordered that Court adjourn until to-morrow at 2. Oclock P. M.

Henry Brevoort

Wm. S. Blackwood.

Supreme Court. January 17th 14th Day 1860.
Present, as on yesterday.
Court met pursuant to adjournment

Present as on yesterday.

The Committee appointed to examine Wm. H. Harris, applicant for license to practice before any Courts of this Territory have made the following report, to wit;

Territory of New Mexico
County of Santa Fé

To the Supreme Court
January Term A. D. 1860

In accordance with appointment by the Court to examine Wm. H. Harris touching his qualifications for admission to the Bar, we report that

Supreme Court January 1st. 14th Day 1860.

Have discharged that duty, and recommend that the applicant be admitted."

"O. H. Baird"
"Leonidas Smith"
"Wm. A. Stratt"

On motion of Oliver H. Baird Esq. Wm. H. Hemie, was duly sworn as an Attorney and Counsellor at Law to practice in all the Courts of this Territory.

Jacob Mayer Admr. of
Joseph Bugg deceased.
vs.
Wm. F. H. Brooks. Use &c

} Appeal D. C. Judicial District.

And now on this day come again the parties by their Counsels and the Counsel having concluded their arguments, on the motion of dismissal of this cause filed by the Counsel for the appellee at a former day of this term, and the Court not being fully advised in the premises, take the same under advisement.

Ordered that Court adjourn until to-morrow at 10 o'clock A.M.

Riley Beaudin
Wm. F. Blanchard

Supreme Court January 15th 15th Day 1860.

Court met pursuant to adjournment

Present as on yesterday.

Ordered that Charles P. Clover, Elected Clerk pro tem. for the Meeting of Supreme Court be allowed $30.00 for six days attendance on this term of the Supreme Court aforesaid Meeting.

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Supreme Court February 18th 1856 Day

It is further ordered that Juan Ortega be allowed $12.00 for six days attendance on this term of the Supreme Court as bailiff.

It is further ordered that Charles P. Eleven United States Marshal be allowed twenty eight dollars and fifty cents for stationery, &c. &c. furnish for the use of the Court during this present term

It is further ordered that Charles P. Eleven late Marshal of the United States Marshal for the District of New Mexico, be allowed, Ten dollars and fifty cents for wood furnished for the use of the Court during the present Term.

Ambrosio Gallegos, et al
vs. } Appeals 3rd Judicial District.
Juan Cristobal Armijo et al

And now on this day came the Appellants by their Counsel Messrs. Baird and Hopkins, and file the assignments of Errors in this cause.

Ordered that Court adjourn until to-morrow at 9 o'clock A.M.

Kirby Benedict
Wm S Blackwood

Supreme Court, January 17th 1860.

Court met pursuant to adjournment.
Present as on yesterday.

Ordered that Court adjourn until to-morrow at 9 Oclock A M.

Kirby Benedict

Wm G. Blackwood.

Supreme Court, January 20th 1860.

Court met pursuant to adjournment.

Present as on yesterday

Jacob Mayer adm of
Joseph Bugg, deceased.
vs.
Wm. S. H. Brooks, U.S.A.
} Appeal fr. 3rd Judicial District.

And now on this day come again the parties by their Counsel, and this Cause having been argued at a former day of this term upon a motion to dismiss this appeal, and the Court now being fully advised in the premises deliver their opinion herein.

Therefore it is considered by the Court, that said Motion be sustained and this appeal be and hereby is dismissed, and it is ordered that the appellee recover of the appellant his costs in this behalf laid out and expended, and that execution issue therefor. Written opinion to be filed in cause.

Ordered by the Court, That all Causes and Motions pending in and pertaining to this Court not otherwise disposed of, be and hereby are continued until the next term of this Court.

Ordered that Jesus Maria Baca, Sheriff of the County of Santa Fé, be allowed twenty four dollars for fifteen days attendance on the present term of the Supreme Court.

327.

Supreme Court, January 20th 17th Day. 1860.

It is further ordered that Jesus Maria Baca and Salazar be allowed one 25/100 dollars for road furniture for the use of this present term of this Court.

It is further ordered that Samuel Allison Clerk of this Court be allowed thirty dollars for six days attendance on this term of this Court to be paid by the United States.

Ordered that Samuel Allison be allowed for ten days attendance as Clerk at the rate of five dollars per day to be paid by the Territory viz fifty dollars.

It is further ordered that Juan Ortiga be allowed $16.00 for six days attendance on this term of the Court as Bailiff.

Ordered that Court adjourn until Court in course.

Kirby Benedict
Chief Justice

Wm. F. Mackwood.
Associate Justice

Supreme Court January 7th. 1861. 1st. Day.

At a regular term of the Supreme Court of the Territory of New Mexico, begun and held at the Court House in the city of Santa Fé on the first Monday of January being the 7th day of said Month 1861.

Present.

Hon. Kirby Benedict, Chief Justice N. of S. F. M.
" William G. Blackwood, Associate Justice
" Charles P. Clever, U.S. Marshal for said Dist.
Jesus Maria Baca, Sheriff, Sheriff.
Samuel Ellison, Clerk.

The Marshal, appointed in open Court, Peter Foro Meeting, Bailiff during the present term of this Court. Who appeared and was duly sworn as such.

Court then adjourned until to-morrow at 11. Oclock A.M.

Kirby Benedict
Wm. G. Blackwood

2d. Day. January 8th. 1861.

Court met pursuant to adjournment.
Present as of yesterday.

Court adjourned until to-morrow at 11. Oclock A.M.

Kirby Benedict
Wm. G. Blackwood

3rd Day. Supreme Court, January 9th 1861.

Court met pursuant to adjournment.

Present as of yesterday,

José Cacados Molino

vs.

Maria de la Cruz Benavides } Appeal from 3rd Judl. Dist.

This cause came on to be heard upon the Transcript of the record of the Court below, Thomas H. Hopkins Esq. appearing for the appellant, no one appearing for the appellee and the said cause was thereupon argued on the part of the appellant and submitted upon said argument and brief of one of the associate counsel S. H. Baird Esq, and record of the Case.

Whereupon, Court adjourned until to-morrow at 11 O'clock A. M.

Wiley Benedict

Wm. G. Mackwood

4th Day. January 10th 1861. Supreme Court.

Court met pursuant to adjournment.

Present as of yesterday.

4th Day. Supreme Court. January 16th 1861.

José Cavados Molino
vs.
Maria de la Cruz Benavides } Appeal from 3rd Judicial District.

This cause having been argued and submitted at a former day of this term, and the Court now being fully advised as to what judgment ought to be rendered herein. It is ordered and adjudged that the judgment of the Court below be and the same is hereby reversed with costs.

And it is further ordered, adjudged and decreed, that the bonds of matrimony heretofore existing between José Cavados Molino and Maria de la Cruz Benavides, be and hereby are forever dissolved and made null and void, and that the said persons are hereby restored to the condition of sole and separate persons, with all the rights and privileges of such and that the appellee pay the costs in this Court and in the Court below and that execution issue therefor.

The opinion of the Court was delivered by O. F. Benedict.

Whereupon Court adjourned until tomorrow at 11 O'clock A.M.

Wiley Benedict
Wm. G. Markwood

5th Day. Supreme Court, January 11th 1861.

Court met pursuant to adjournment.
Present as yesterday

On motion of J. Houghton Esq. to which Lewis Esq. was duly sworn as an Attorney and Counsellor at Law, to practice in all the Courts of this District,

537.

Sup. Ct. Supreme Court, February 11th 1861.

~~Whereupon~~

Whereupon Court adjourned until this 4th Monday of February inst. 1861.

Hiby Benedict

Wm G Blackwood

Supreme Court, February 25th 1861.

Court was opened by the Marshall pursuant to adjournment.

Present.

Hon, Hiby Benedict, Chief Justice &c.
Charles P. Clever Esq. Marshal.
Samuel Allison. Esq. Clerk.
Jesus Mª Baca y Salazar. Sheriff

And quorum of the Court not being present, the Chief Justice, ordered Court to be adjourned until to-morrow at 11. O'clock A. M.

Hiby Benedict

Supreme Court. February 26th 1861.

Court met pursuant to adjournment.

Present as on yesterday.

Ordered by the Chief Justice that Court adjourn until to-morrow at 3. O'clock P. M.

Hiby Benedict

Supreme Court. February 27th. 1861.

Court met pursuant to adjournment.

Present as of yesterday - as also.
Hon. Wm. G. Blackwood Associate Justice

Court adjourned until to-morrow at 3. O'Clock P. M.

Kirby Bennett
Wm. G. Blackwood

Supreme Court. February 28th. 1861.

Court met pursuant to adjournment.

Present as of yesterday - as also.
T. D. Wheaton. U.S. District attorney.
Ordered that Court adjourned until to-morrow at
11. a. Oclock A.M.

Kirby Bennett
Wm. G. Blackwood

Supreme Court. March 1st. 1861.

Court met pursuant to adjournment.

Present as of yesterday.

Juan Bautista Vijil, Plaintiff.

vs.

The United States.

And now comes the defendants by their Attorney. T. D. Wheaton Esq. and files his demurrer

Supreme Court. March 1st. 1861.
in this cause, and the same is set down for
hearing on to-morrow,

Whereupon. Court adjourned until to-morrow at
11. O'clock A. M.

Kirby Benedict

Wm. G. Blackwood.

Supreme Court. March 2d. 1861.

Court met pursuant to adjournment.

Present as of yesterday.

Juan Bautista Vigil y Alonzo
José Antonio Rivera & Solomon M. Nunez

vs.

The United States

This cause come on to be heard upon the demurrer filed by the Dist. District Attorney, and was arguedly Counsel.

Whereupon, it was ordered and adjudged by the Court, that the said demurrer be and hereby is overruled.

On motion of said District Attorney, leave is granted him to file his answer to the petition herein, by the meeting of Court on Monday next.

Ordered that Court adjourn Monday next, the 4th. inst. at 10. O'clock A. M.

Kirby Benedict

Wm. G. Blackwood

Supreme Court. March A.D. 1861.

Court met pursuant to adjournment

Present as of Saturday last the 2d. inst.

Juan Bautista Vigil y Alaid.
José Antonio Luna dem.
Solomon Ll. Hanes,
vs.
The United States

Original Suit.

On this day the United States District Attorney, files his answer to the plaintiffs petition herein, and by agreement of parties, this cause is continued, with leave to either party to take testimony by depositions, in the town of Santa Fé, before the Chief Justice or Clerk of this Court upon giving to the opposite party notice in writing, as many as twenty days, before the taking of the same.

It is ordered, that the Clerk issue subpeonas, when required by the parties to be served by the Marshal in any part of this Territory.

It is ordered by the Court that Charles P. Clever, 2d. Marshal be allowed $ for Stationery &c, for the use of the Court during the present term of the Supreme Court.

It is further ordered by the court that the Charles P. Clever, United States Marshal be allowed $ for fuel during the present term of the Supreme Court.

It is ordered by the Judges now assembled, That until otherwise provided, the following shall be the times and places in each Judicial District of this Territory, at which United States District Courts shall be held for all causes, Civil and Criminal in which the United States now are or hereafter may be or become parties and which shall by statute to the jurisdiction of said Courts.

Supreme Court. March 4th 1861.

First District.

The Spring term of the present year shall remain as now established, but afterwards, said Courts shall be held on the first Mondays of March and August in each year, at the City of Santa Fé,

Second District.

On the second Mondays of April and October of each year, in the town of Peñalosa de Pecos

Third District.

On the first Mondays of May and October of each year in the town of Albuquerque. Said Courts may continue in session until the business shall be disposed of.

Ordered that the Clerk cause these orders to be published in the Santa Fé Gazette

Ordered that Court adjourn until to-morrow at 9 o'Clock A. M.

Kirby Benedict

Wm. G. Blackwood

Supreme Court, March 5th 1861.

The Court met pursuant to adjournment. Present as on yesterday

It is ordered by the Court, that Theodore D. Wheaton Esqr, U. S. District Attorney, be allowed for seven days attendance during the present term of this Court, and for Eighty miles travel, from Taos, his place of residence, to Santa Fé the place of holding Court.

It is ordered by the Court that Charley P. Clever, U. S. Marshal be allowed for thirteen days attendance during the present term of this Court.

It is further ordered, that Samuel Ellison Clerk of the Supreme Court, be allowed for thirteen days attendance during the present term of this Court,

It is ordered, that Telesforo Martin be allowed for thirteen days attendance as Bailiff during the present term of this Court.

It is ordered that the U. S. Marshal be allowed dollars, for repairs &c. made at the Court house.

It is ordered, that Jesus Maria Baca y Salazar, Sheriff of the County of Santa Fe be allowed for thirteen days attendance as Sheriff, during the present term of the Supreme Court at $1.50. Per day, to be paid by the Territory.

Ordered that all Causes, not otherwise disposed of, are hereby continued to the next term of this Court.

Whereupon Court adjourned until Court in Course.

Kirby Benedict
Chief Justice

Wm. G. Blackwood,
Associate Justice.

Ter. vs. Ely. — Supreme Court. Santa Fé, January 6th 1862

At a regular term of the Supreme Court, of the Territory of New Mexico, begun and held at the Court House, in the city of Santa Fé, on the first Monday of January, being the 6th day of said month A.D. 1862.

Present. Hon. Kirby Benedict, Chief Justice of said Territory of New Mexico.
" Sidney A. Hubbell Associate Justice
" Joseph G. Knapp. Associate Justice
Chas. P. Clever. U.S. Marshall for said Territory
Antonio Ortiz y Salazar Sheriff.
" Tho. D. Wharton Esq. United States District Attorney

J. House Britts Esq. having resigned the office of Clerk of this Court,

It is ordered that Samuel Ellison Esq. be and hereby is appointed Clerk of this Court, to perform all the duties and enjoy all the rights and emoluments pertaining to the said office.

Thereupon the said Ellison, appeared and in open Court took the oath of office prescribed by Act of Congress, as Clerk in due form and also the oath of allegiance prescribed in the Act of Congress, of August 5th 1861.

Thereupon, the said Ellison, as Clerk entered upon the duties of his office.

Ordered,

That all Attorneys and Counsellors at Law practising in this Court and now present, or shall present themselves to practice hereinafter, and have not heretofore taken, the oath of allegiance prescribed by Act of Congress August 6th 1861 be required to take the said oath in open Court,

1st Day. Supreme Court, January Term 1862.

Present, Merrill Ashurst, William Bland Jones and Richard H. Tompkins, Esqrs. to wit the said oath in due form.

Hon. D. Wheaton and Chas. P. Clinton Esq. had previously taken the same.

Ordered,
That the Clerk without delay procure four Dockets for the use of this Court of the Causes pending herein.

Ordered,
That the Marshal furnish of good quality the necessary Stationery for the use of this Court.

The Marshal now appoints Juan Rafael Sandoval, Bailiff to this Court, who appeared and was duly sworn and entered upon the discharge of his duties.

Sigmund Seligman &
Chas P. Clever Appellants
vs.
Jesus Maria Varela, Appellee } Appeal from Santa Fe County.

Now on this day come the parties by their Counsel, and upon motion of Appellants, It is ordered, that this Appeal be dismissed

It is therefore considered by the Court, that the Appellee, recover of the Appellants his costs, in this behalf laid out and expended and that execution issue therefor.

Benito Arellas, Appellant
vs. } Appeal.
Benito Arellas Appellee

And now on this day come the parties by their Counsel, and it is ordered by the Court

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1st Day. Supreme Court. January Term 1862.

That this cause be set down for argument on to-morrow.

Ordered that this Court adjourn until half past two Oclock on to-morrow afternoon

Kirby Benedict

Sydney A. Marshall

Joseph G. Knapp

2d Day. Supreme Court. January Term 1862

Court met pursuant to adjournment

Present as on yesterday.

1. Vicente Montas vs. Benito Montas } Appeal.

This being the day set for the argument of this cause. The parties appear by their Counsel, and this Cause is now argued by Jno. D. Whelpley Esq. on the part of the appellant, and Mr. Ashurst on the part of the appellee whereupon the further arguments of this Cause is continued until to-morrow.

Whereupon Court adjourned until to-morrow morning at 10 Oclock

Kirby Benedict

Sydney A. Marshall

Joseph G. Knapp

5th Day. Sesiones Court, Wednesday January 8th 1862.

Court met pursuant to adjournment

Present as on yesterday

1. Vicente Montes
vs.
Benito Montes } Appeal.

This cause now on this day came again the parties by their Counsel, and Thos. D. Wheaton Esq. having concluded his argument for the Appellant, and the Court not being fully advised as to the judgment they ought to render in this cause, take the same under advisement.

2 Antonio Matías Ortiz
vs.
Jesus María Baca y Salazar } Appeal.

This cause now on this day came the parties by their Attorneys, and the death of the Appellant being suggested to the Court, by the Counsel for the said Appellant. It is ordered by the Court, that the Executors of the Appellant, to wit Jesus Ortiz y Delna, Francisco Ortiz y Salazar and Simeon Delgado be made parties plaintiff in the prosecution of this Appeal, thereupon the said Executors by their Counsel entered their appearance herein, and dismissed Antonio Matías Ortiz. } with any further motion by his Executors
vs. } Appeal.
Jesus María Baca y Salazar

and now again came the parties by their Counsel and this cause is now argued by Thos. Spencer Esq. for the Appellants and Thos. D. Wheaton Esq. on the part of the Appellee, and the further argument of this cause is continued until to-morrow.

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3d. Day. Supreme Court. Wednesday January 8th 1862.

Thompson Court adjourned until to-morrow at 10. o'clock A. M.

Kirby Benedict

Sydney A Kibbell

Joseph G. Carvallo

4th. Day. Supreme Court. Thursday January 9th 1862.

Court but pursuant to adjournment.

Present as on yesterday.

Gaspar Ortiz y Delva
Francisco Ortiz y Delgado
Simon Delgado, Executors.
of Antonio Matias Ortiz y deceased,
vs. Appeal.
Jesus Maria Baca y Delgado

And now on this day came again the parties by their Counsel, and the Hon. Baker Reporting concluded his argument for the Appellants, and the Court being fully advised as to the judgment they ought to render in this cause, take the same under advisement.

Vicente Mestas
vs. Appeals
Benito Mestas

And now on this day comes the plaintiff in person by Hon. D. Wheaton Esq, and suggests a termination of the reconvention, and files his motion for order upon the Clerk of the 2d. Judicial Dist. Court &c. &c. an amended transcript of

4th Day. Supreme Court. Thursday January 9th 1862.

In said cause.

Whereupon Court adjourned until to-morrow at 10, Oclock A. M.

Kirby Benedict

Sydney A Marmaduke

J. G. Knapp

5th Day. Supreme Court. Friday January 10th 1862.

Court met pursuant to adjournment,

Present as on yesterday.

4. Vicente Montas vs. Benito Montas } Appeal

This cause came up upon the motion of the Appellant by his counsel for a further rule upon the Clerk of the 2d Judicial District to send up an amended transcript of the record in this cause, and after the arguments of counsel and the Court being fully advised in the premises, overrule said motion

3. Miguel Vina y Romero, vs. Juan Sandoval, } Appeal,

And now on this day came the parties by their Counsel and this cause being argued by Theodore D. Wharton Esq. for the Appellant and Ellis, Delaney & Knapp, for the Court of the Appellee

343 5th Day. Supreme Court, Friday January 10th 1862

And the Court not being fully advised as to the judgment they ought to render in this cause, take the same under advisement

Ordered, that Court adjourn until to-morrow at 10. Oclock A. M.

Kirby Benedict

Sydney A Kimball

J. B. Ward Jr.

6th Day. Supreme Court. Saturday, January 11th 1862,

Court met pursuant to adjournment.

Present as on yesterday.

4 Vicente Mestas
vs,
Benito Mestas } Appeal.

And now on this day come the parties by their Counsel, and this cause being argued by Theodore D. Wheaton Esq, on the part of the Appellant, this cause was then continued until Monday next

Ordered that Court adjourn until Monday, the 13th instant at 10. Oclock A. M.

Kirby Benedict

Sydney A Kimball

J. B. Ward Jr.

7th Day. Supreme Court. Monday, January 13th 1862.

Court met pursuant to adjournment

Present as on Saturday last, the 11th instant.

4. Vicente Mestas
vs.
Benito Mestas } Appeal

And now on this day came again the parties by their Counsel, and this cause being argued by Mr. Ashurst Esqr. on the part of the appellants, and Theodore D. Wheaton Esqr. having concluded his argument on the part of the appellant, and the Court not being fully advised as to their judgment they ought to render in this cause, take the same under advisement.

6. Pablo de Herrera
María Concepción Romero
vs
José Miguel Matis } Appeal,

And now on this day came the parties by their Counsel, and this cause being argued by Theodore D. Wheaton Esqr. on the part of the appellants, this cause is continued until to-morrow.

Ordered that Court adjourn until to-morrow at 10 o'clock A. M.

Wm Benedict
Sydney A Hubbell
S. G. Reeves

345.

8th Day. Supreme Court. Tuesday. January 14th. 1862.

Court met pursuant to adjournment.

Present as on yesterday.

5. Pablo de Herrera
Maria Concepcion Romero
vs
José Miguel Montoya } Appeal.

And now on this day came again the parties by their counsel, and Theodore D. Wharton Esq. having concluded his argument in the part of the Appellant, and H. Dehart Esq. on the part of the Appellee, and the Court not being fully advised as to the judgment they ought to render in this cause, take the same under advisement.

6. José Romero.
vs.
The Territory } Appeal from Taos County.

And now on this day came the Appellant by Theodore D. Wharton Esq. his Counsel, and upon his motion, this appeal is dismissed by the Court.

It is therefore considered by the Court, that the said Territory recover of the Appellant her costs in this appeal sustained, and that execution issue therefor, and that the Appellant pay his costs herein.

Antonio Gallegos, Tomas Gallegos, Pedro Gallegos, Pedro M. Gallegos, Teresa Gallegos, Monica Gallegos and her husband Domingo Rena, Rafuela Gallegos, and her husband, Damaso Lujerdé, Rosalia Gallegos and her husband, Antonio Ortiz, and Juan José Gallegos, Jerónimo Gallegos. Minors by their next friend Rosa Rena.

Thomas Ma. Cabeza de Baca, Esq. Attorney in this Court for the Appellant. Court adjourned to the 15th inst.

8th Day. Supreme Court. Tuesday January 14. 1862,

Juan Cristoval Armijo. }
Manuel Gonzales, Ramon Gallegos, } Appeals,
Gertrudes Gallegos. and her }
husband Felipe Samora and }
Miguel Garcia. Executors &c }

And now on this day come the parties by their Counsel, and this cause being argued by Wilton S. Jones on the part of the appellants, this cause is continued until to-morrow.

Ordered that Court adjourn until to-morrow at 10 Oclock A. M.

Kirby Benedict
Sydney A Rudulph
J. B. Reynolds

9th Day. Supreme Court. Wednesday. January 15th 1862,
Court met pursuant adjournment.

Present as on yesterday.

Antonio Gallegos. Jose Gallegos. Pino Gallegos
& Pedro Mo. Gallegos, Teresa Gallegos. Veronica Gallegos and
her husband Domingo Pena, Rafaela Gallegos, and her husband Damacio Gallegos,
Josefa Gallegos. and her husband Antonio Arias, Juan José Gallegos & Juan Mo. Gallegos.
minors by their next friend Maria Pena vs. Juan C. Armijo. Manl. Garcia
Ramon Gallegos, Gertrudes Gallegos and her husband, Felipe Samora and
Miguel Garcia, Executors - Now again come the parties by their Counsel,
and W. S. Jones Esqr. having concluded his argument on the part of the appellants, and Mr.
Anderson on the part of the appellee, and the Court not being fully advised as to
the judgment it ought to render in this case takes the same under advisement

Juan Bautista Vigil y Alaríd }
Antonio Reyes and }
Jose Miguel Nonet. } Original suit.
vs. }
The United States }

This cause on the former hearing

9th Day. Supreme Court. Wednesday. January 15th 1862.

the present term, upon motion of the plaintiffs Counsel, and by agreement of Theodore D. Wheaton Esq. United States District Attorney, having been set for trial for this day. Now come the plaintiffs by their Counsel, Messrs. Houghton and Jones, Esqrs. and the defendants by their attorney, T. D. Wheaton Esq. and on motion of said attorney Samuel Ellison Esq. is hereby appointed by the Court to Interpret and Translate, such testimony as shall be given in this Cause in the Spanish language, and also, special register to reduce to writing all testimony in this trial and in open Court. And thereupon, the said Ellison, was duly sworn in conformity with his appointment, to the faithful, true and Skillful performance of his duties.

The issue having been joined in this Cause and the parties ready for trial, the plaintiffs introduced, as witnesses in their behalf, Alexander D. Wilson and John A. Clark, who upon being duly sworn each, severally gave his testimony which was reduced to writing by the register in presence of the Court, and by the witness.

Ordered that Court adjourn until to-morrow at 10. Oclock A.M.

Hiram Benedict

Sydney A. Hubbell

S. S. Edwards

10. Day Supreme Court. Thursday, January 16th. 1862.

Court met pursuant to adjournment.

Present as on yesterday.

Juan Bautista Vigil y Alarid,
Antonio Rivera and
José Miguel Howeck,
vs.
The United States } Original Suit.

And now on this day come again the parties by their Counsel, and in the further trial of the issue joined herein, plaintiffs introduced Aquatin Durán, as a witness in their behalf, and said Durán being duly sworn proceeded to testify, and his testimony is reduced to writing, and there not being time to conclude the taking of the testimony of said witness on this day,

It is ordered that Court adjourn until to-morrow morning at 10. Oclock.

Hiram Beardsley
Sydney A Hubbell
J. G. Reynolds

11th Day. Supreme Court. Friday, January 17th 1862.

Court met pursuant to adjournment.

Present as on yesterday.

Juan Bautista Vigil y Alarid,
Antonio Rivera and
José Miguel Howeck
vs.
The United States } Original Suit.

[illegible]

11th Day. Supreme Court. Friday, January 17th 1862.

parties by their Counsel, and the ~~Attorney~~ Clerk of ~~defendants by their~~ defendants, moved the Court to rule the plaintiffs to give security for their Costs herein, which said motion upon being argued by Counsel, as well by the plaintiffs as for the defendants, was denied and overruled by the Court.

Whereupon, the Court proceeded to hear the further testimony in the further trial of this cause. And the testimony of Agustin Durán, being now concluded, so far as the plaintiffs proposed at present to examine him, and the same being reduced to writing in the presence of the Court, was signed by him.

And thereupon Donaciano Vigil, was introduced by the plaintiffs and duly sworn as a witness in their behalf, and proceeded to testify, and there not being time to conclude his testimony on this day.

It is ordered that Court adjourn until to-morrow morning.

Hiram Beneditt

Sydney A Hubbell

S P Knapp

12th Day. Supreme Court, Saturday January 18th 1862.

Court met pursuant to adjournment.

Present as on yesterday.

On this day at the time for opening this Court there were present as upon yesterday, and a fire breaking out in the roof of the Court House, and preventing the continuing of session, on this day.

12th Day. Supreme Court, Saturday, January 18th 1862.

It is ordered that Court adjourn until tomorrow morning at 10. Oclock

Kirby Benedict
Sydney A Smith
J. S. Slough

13th Day. Supreme Court, Monday, January 20th 1862.

Court met pursuant to adjournment.

Present as on Saturday last.

Juan Rautista Vigil y Alaríd,
Antonio José Rivera and
José Miguel Manuel.
vs.
The United States } Original Suit.

And now on this day come again the parties by their Counsel, and continue in the examination of the witness, Donaciano Vigil, and there not being time to conclude his testimony on this day.

It is ordered that Court adjourn until to-morrow morning at 10. Oclock

Kirby Benedict
Sydney A Smith
J. S. Slough

351. 14th Day. Supreme Court. Tuesday, January 21st 1862.

Court met pursuant to adjournment. Hon. Theo. D. Wheaton Attorney.

Present as on yesterday. Except U.S. Dist. Atty.

Juan Bautista Vigil, Alcalde
Antonio José Rivera and
José Miguel Roybal
vs.
The United States

6. Original Suit.

And now on this day come again the parties by their Council, and the further trial of this cause proceeded with the testimony of the Witness Donaciano Vigil, and not concluding the same, and Theodore D. Wheaton, Esq. U.S. District Attorney failing to appear, to further attend to the defence on this day.

It is ordered that Court adjourn until to-morrow morning at 10. O'clock A.M.

Hiram Beardsley
Sydney A. Burbank

D.C. Elwell Clk

15th Day. Supreme Court. Wednesday January 22nd 1862.

Court met pursuant adjournment.

Present as on yesterday,

The Territory of New Mexico
vs.
William Bransford

10. Appeal from Mora County.

And now on this day come the parties by their Council and by their agreement this Cause is submitted to the Court, without argument, for its judgment thereon, and the Court takes the same under advisement.

15th Day. Supreme Court. Wednesday January 22nd 1862

Juan Bautiste Vigil y Alarid,
Antonio José Rivera and
Jose Miguel Roucke,
vs. Original Suit.
The United States

The United States District Attorney being unable from sickness, to prosecute the defence of this cause, on this day.

It is ordered that Court adjourn until to-morrow at 9 O'clock A. M.

Kirby Benedict

Sydney A Marshall

S. G. Ward's

16th Day. Supreme Court. Thursday, January 23d 1862.

Court met pursuant to adjournment.

Present as on yesterday

Juan B. Vigil y Alarid.
Antonio José Rivera
Jose Miguel Roucke.
vs. Original Suit.
The United States

The United States District Attorney being unable from sickness to prosecute the defence of this cause, on this day.

16th Day. Supreme Court. Monday, January 23rd 1862.

It is ordered that Court adjourn until to-morrow Morning at 10. Oclock A

Wm Benecke
Sydney A Bushell
J. G. Rivas

17th Day. Supreme Court. Friday January 24th 1862.

Court met pursuant to adjournment.

Present as on yesterday.

Juan Bautista Vigil y Alarid
Antonio José Pereira and
José Miguel Houck.
vs.
The United States } Original Suit.

And now on this day come the plaintiffs by their Attorneys, Messrs. Jones and Houghton, and the defendants, by their District Attorney, Theodore D. Wheaton, and owing to the sickness of the said District Attorney, this cause is, by consent of the parties, continued to this next regular term of this Supreme Court, And it is ordered that the testimony taken before this Court, during the present term in this cause, from page one to [illegible] inclusive shall be received and read on the trial of this cause and be kept on file among the papers heretofore for that purpose.

And it is further ordered, that the testimony in this cause shall be taken on interrogatories before Samuel Ellison, Clerk of this Court, viz Santa Fe, the plaintiffs giving five days notice of the time of the

In Supt. Supreme Court, Santa Fé, January 24th 1842.

the testimony and one additional day for every twenty five miles travel from the place of residence of both of the Attorneys to and from Santa Fé,

Vicente Mestas,
vs. } Appealed from Rio Arriba
Benito Mestas } County.

And now on this day come again the parties in this cause and the court delivers its opinion herein, by C. J. Benedict dissenting.

Whereupon it is ordered and adjudged that the judgment of the Court below, herein is reversed, and the cause remanded to the District Court for the County of Rio Arriba, and that said cause proceed the same, and

It is further ordered, that the appellee recover of the appellee his costs as well in the court below as also in this court, laid out and expended, and that execution issue therefor.

Cristobal Montoya Ortiz
Jose Ortiz y Pino
Gregorio Ortiz y Salazar
Manuel Delgado Executors of
Antonio Montoya deceased
vs } Appeal from Santa
José Maria Baca y Salazar } Fé County.

And now on this day came again the parties by their Counsel, and the court delivers its opinion herein, by Benedict J. C.

Whereupon it is considered and adjudged by the court, that the judgment of the court below, herein be reversed, and the sum of three hundred and seventy nine dollars, interest less and costs, adjudged in said court, to the appellee

And it is further considered and adjudged that the said appellee recover of the

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3. Supreme Court, Friday, January 24th, 1862

Steve Francisco Ortiz, Gregorio and Ursino Delgado, Executors of Antonio Ortiz } the goods and chattels, lands, tenements and effects of Antonio Matías Ortiz, deceased, in the hands of Gaspar Ortiz y Sedano, Francisco Ortiz y Delgado and Ursino Delgado, Executors of the last will and testament of the said deceased, and of Charles D. Bowen, the only [illegible] security on the appeal bond herein, the sum of Six Thousand eight hundred seven dollars and fifty cents, herein affirmed and adjudged to the said Jesus María Baca y Delgado the appellee, together with his costs, as well in the Court below, as also in this Court, laid out and expended, and that execution issue therefor.

Vicente Mestas }
vs. } Appeal from Rio Arriba
Benito Mestas } County.

And now on this come again the parties by their Counsel, and the Court delivers its opinion herein by Knapp J.

Therefore, it is considered and adjudged by the Court that the judgment in the Court below, be and hereby is reversed, and this cause be remanded to the District Court, for the County of Rio Arriba, for further proceedings and that the appellee, pay the costs of the appeal, laid out and expended, and that execution issue therefor.

Pablo de Herrera and }
María Encarnación Romero }
vs. } Appeal from Santa Fé
José Miguel Montes } County.

And now on this day come again the parties by their Counsel, and the Court delivers its opinion herein by Elkins J. W. J. Benedict, dissenting.

Therefore it is ordered and adjudged by the Court, that the decree of the Court below be and hereby is reversed, and the cause remanded to the District Court for the County of Santa Fé, for

17. Supreme Court, Friday January 24th 1862

further proceedings therein, and that the appellants recover of the appellants his costs in this appeal laid out and expended, and that execution issue therefor.

The Territory of New Mexico
vs.
William Bransford } Appeal from
} the Third Judicial District.

10. And now on this day come the parties by their counsel, and the Court delivers its opinion thereon by Watts J.

Whereupon it is ordered and adjudged by the Court that the decision of the court below be reversed and that the case be remanded to the District Court of Mora, for further proceedings therein, and that the appellant recover of the appellee his costs in this behalf laid out and expended and that execution issue therefor.

Sigismund Ilfeldman
Charles P. Clever
vs.
Juan Jose Montoya } Appeal from the
} 3rd District Court.

And now on this come the parties by their counsel, and this cause being argued by counsel, thereupon submitted to this Court for its judgment thereon.

Ordered that Court adjourn until to-morrow at 9 o'clock A.M.

Kirby Benedict
Sydney A. Mitchell
J. G. Watts

3 N.M.

18. Supreme Court. Saturday, January 29: 1881

Court met pursuant to adjournment

Present as on Friday last except the

Hon. Henry R. Hubbell, Associate Justice

Sigmund Seligman
Charles P. Clever
vs.
Juan Jose Montoya } Appeal from Santa Fé County

And now on this day come again the parties by their Counsel, and the Court delivers its opinion herein by Elkins J.

Wherefore it is ordered and adjudged by the Court that the judgment of this Court below be affirmed, and that the appellee recover of the appellants, the sum of sixty three dollars and ten cents, the sum recovered in this Court below, together with interest upon the same from the time of the rendition of the judgment therein, and also his costs in this Court before us in this Court laid out and expended and that execution issue therefor

N Mex

Miguel Otero Romero
vs.
Juan Sandoval } Appeal from Santa Fé County

And now on this day come again the parties by their Counsel, and the Court delivers its opinion herein by Elkins J. Bradford J. dissenting opinion by Henrie J.

Wherefore it is ordered and adjudged by the Court that the judgment of the Court below be affirmed and that the writ of procedendo issue to the Court below to carry into effect this judgment of this Court below

It is further adjudged that so much of the record in this cause as pertains to proceedings in Chancery be remanded to the Court below for further proceedings in conformity with the rules pertaining to cases in Chancery

It is further adjudged, that the appellee recover of the appellant his costs in this behalf expended, as well in the

18. Supreme Court. Rd Saturday January 24th 1862

Court below, as in this Court. and that execution issue therefor.

It is ordered that Court adjourn until Wednesday next the 29th inst. at 4. Oclock P. M.

Hiley Beardsley
J. G. Knapp

19. Day. Supreme Court. Wednesday January 29th 1862.

Court met pursuant to adjournment.

Present as on yesterday Saturday last. Hon. Sydney A. Burbee, Presiding Justice.

Antonio Gallegos, Tomas Gallegos, Pedro Gallegos, Pedro Maria Gallegos, Teresa Gallegos Monica Gallegos and her husband, Domingo Pina, Rafaela Gallegos and her husband, Ramon Gurule, Nicolas Gallegos, and her husband, Antonio Arias, Juan José Gallegos and Francisco Gallegos and Clara Pina, Minors by their next friends.

vs

Juan Cristoval Armijo, Manuel Garcia Ramon Gallegos, Gertrudes Gallegos and her husband Isidro Samora, Miguel Garcia Executors —

And now on this day come again the parties by their Counsel, and the Court delivers its opinion herein by W. F. Bennett, to be filed in vacation

Whereupon it is ordered and adjudged by the Court, that the decree of the Court below be and hereby is ~~reversed~~ affirmed, and the cause remanded to the District Court of Bernalillo, the County of Bernalillo, for further —

359. 19. Day. Supreme Court. Wednesday January 29th 1862.
Proceedings therein, in conformity with the opinion
herein.

It is further ordered, Adjudged and decreed, that
the appellants recover of the appellees their Costs
in this appeal laid out and expended, and that execution
issue therefor.

Ordered, That all Attorneys practising in the Supreme
Court, or any of the District Courts of this Territory, do take
upon themselves the oath, required by the act of Congress
dated August 6th 1861. before one of the Judges, or the
Clerk of this Court, or before the Clerk of the District Court
and file the same with the Clerk of the Supreme Court
within twenty days after notice of this order; and in case
of failure to do so, the District Judge may strike the name
of such delinquent from the list of Attorneys of the Supreme
and District Courts.

Ordered further, that the Clerk of this Court notify
every attorney of this Court, who has not taken the oath
of Allegiance as required in the preceding order, of said
order, by sending him a copy of the same.

Ordered by the Court, That Charles P. Clever United States
Marshal for the Territory of New Mexico, be allowed for
Seventeen days necessary attendance on this Term of the
Supreme Court, for said Territory, at the rate of five dollars
per day, Eighty Five Dollars.

Ordered further, that Charles P. Clever U.S. Mr. be allowed the
sum of for repairing damages done to
Court House by fire, during the present term.

Ordered further, That Charles P. Clever U.S. Marshall for
the Territory of New Mexico, be allowed the sum of
for repairs done on Court House Windows during the
present session of this Court.

19th Day. Supreme Court. Thursday, January, 1862.

Ordered further, That Charles P. Clever, U.S. Marshal, be allowed the sum of for stationery and fuel, furnished by said marshal for the use of this Court during the present term, thereof

Ordered further, That Theodore D. Wheaton, United States District Attorney, for the Territory of New Mexico, i.e. Arizona, for seventeen days necessary attendance on this Term of the Supreme Court for the said Territory, at the rate of five dollars per day.

Samuel Ellison.

Ordered further, That the Clerk of the United States for this court, be allowed for seventeen days necessary attendance during the present term of this court, as such Clerk, at the rate of five dollars per day. Eighty five dollars

Ordered further That Charles P. Clever, U.S. Marshal, be allowed for postage to one dollar, for the preservation of papers pertaining to the United States courts of this district.

Ordered, further, that Juan Rafael Sandoval be allowed, for seventeen days necessary attendance on this Court at its present term, as Bailiff.

Ordered further, that Antonio Ortiz y Salazar, Sheriff of the County of Santa Fé, be allowed, for nineteen days necessary attendance on this Court during the present term thereof, at the rate of one and one half dollars per day to be paid by the Territory.

Ordered further that Juan Rafael Sandoval, be allowed for two days attendance on this Court as Bailiff, to be paid by the Territory, at the rate of one dollars and fifty cents;

561.

9th Day. Supreme Court. Wednesday 29th January 1862.

Ordered, That Court adjourn until Court in course.

Hiby Benedict
Chief Justice
J. G. Swayne.

1st Day. Supreme Court, January Term 1863,

At a regular Term of the Supreme Court, of the Territory of New Mexico, begun and held at the Court House in the City of Santa Fé on the first Monday of January 1863, being the fifth day of said Month.

Present,

Hon, Kirby Benedict, Chief Justice of the Territory of New Mexico,

" Sydney A. Hubbell, Associate Justice,

" Joseph G. Knapp, Associate Justice,
Theodore D. Wheaton Esq. U.S. Dis. Attorney
Abraham Cutter, U.S. Marshal,
Samuel Ellison, Esq. Clerk

The Marshal now presents in open Court, Diedrick Kazer, Bailiff, to this Court, who appeared, and was duly sworn as such

Juan Bautista Vigil y Alaid
Miguel Roucle and
Antonio José Rivera
vs,
The United States — Original Suit.

Now on this day come the parties by their Counsel, and by their agreement this Cause is continued until the next Term of this Court and both parties have leave to take further testimony in conformity with the former orders made in this Cause,

Ordered that Court adjourn until Wednesday the 7th. inst. at 10. O'Clock A.M.

Kirby Benedict

Joseph G. Knapp

Sydney A. Hubbell

5th Day. Supreme Court, January 1863.

Court met pursuant to adjournment

Present as on Monday.

Juan B. Vigil y Alaid et al
vs.
The United States.

By agreement of parties & their Counsel, it is ordered that publication of Depositions taken therein be made, which

The District Attorney for the United States now presents five Bills of Exceptions taken at last term of the Supreme Court, which were now signed and sealed by the Judges.

Ordered that Court adjourn until to-morrow at 3. O'clock P. M.

Kirby Benedict
Justice Supreme Court
New Mexico

4th Day. January 8th, 1863. Supreme Court,

Court met pursuant to adjournment.

Present as on yesterday.

Ordered by the Court, that Theodore D. Wheaton Dist. States District Attorney, be allowed for four days necessary attendance on this term of the Supreme Court, at the rate of five dollars per day, and for 240 miles travel from his place of residence to Santa Fé, the place of holding the Court, & return to his place of residence.

Ordered further, that Abraham Cutler Dists. States Marshal for the Territory of New Mexico, be allowed for four days necessary attendance on this Court, at the rate of five dollars per day; and also that he be allowed twelve dollars and Seventy five cents for Stationery, &c. &c. and Seven dollars and fifty cents for fuel for the use of the Court, during the present session.

Ordered that Ireneo Legora be allowed for three days attendance, on this Court as Bailiff to said Court.

Ordered further, that Samuel Ellison, be allowed for four days necessary attendance on this Court as Clerk, at the rate of five dollars per day.

This day Charles Leib Esq. an applicant for admission, to the Bar, appeared in open Court; and it being shown to the satisfaction of the Court, that the said Charles Leib, is of good Moral Character, and in all other respects qualified according to the Statute in such Case made and provided; and the said Charles Leib, having taken oath to support the Constitution of the United States, and to all

4th Day, Supreme Court, January Term 8th 1863,

to demean himself faithfully and honestly as an Attorney and Counsellor at Law, and Solicitor in Chancery. It is ordered, that the said Charles Leib be admitted to practice, as any Attorney and Counsellor at Law and Solicitor in Chancery in the several Courts of the Territory of New Mexico.

Thereupon the said Charles Leib took and subscribed the oath of Allegiance as required by Law and the orders of this Court.

At the January term of the Supreme Court of the Territory of New Mexico, A. D. 1863, begun and held at Santa Fé, in said Territory.

The Judges of said Court being Assembled and in session at said Term. do hereby in addition to the Terms now provided in the third Judicial District fix and appoint, that a term of the United States District Court, shall be held in said District at Albuquerque in the County of Bernalillo, beginning upon the first Monday of February next. and may continue in session until the business shall be disposed of and, that a term shall be held of said Court at said time and place, each year, unless otherwise provided by the Judges of this Court.

It is further ordered, that all Causes, Matters, Proceedings, suits, notices Summonses, recognizances, subpoenas or bonds of whatever, nature, kind or name whatever, Civil or Criminal now pending, returnable or liable at the next Term of the said ~~Court~~ United States District Court, in said District, and in which the United States are or shall be parties, shall be taken and held ~~and~~ as pending, returnable or liable at the said February term hereby fixed and ~~declared~~ appointed.

4th Day, January 8th 1863. Supreme Court.

It is further ordered, that the Clerk of this Court, make a true transcript of these orders and duly certify the same, and cause the same to be published without delay in the English and Spanish Languages in the "New Mexican" Newspaper of this city of Santa Fé, for four successive weeks.

Ordered that Court adjourn until Court in Course,

Kirby Benedict
Chief Justice

Sydney A Rudbell
Asso Justice

Joseph G Knapp
Asso. Justice.

Supreme Court, July Term 1863.

At a regular Term of the Supreme Court of the Territory of New Mexico, begun and held at the Court house in the City and County of Santa Fé, on the first Monday of July 1863. being the 6th day of said month.

Present.

Hon. Kirby Benedict Chief Justice of said Territory,

Theodore D. Wheaton, Esq. U.S. District Attorney for said Territory

Charles P. Clever, Atty. Genl. of said Territory

Samuel Ellison Esq. Clerk of said Ct

The United States Marshal of the Territory being absent, and only one Judge present, It is ordered, that Court adjourn until to-morrow at 11 O'clock, A. M.

2nd Day. Supreme Court. Tuesday, July 7th 1863.

Court met pursuant to adjournment

Present in addition to the named on yesterday,

Abraham Lutters Esq. United States Marshal for this Territory.

The Marshal now appoints Antonio Montoya, Bailiff to this court for the present Term who appeared and was duly sworn as such.

There not being a quorum of Judges present, and the Chief Justice having received notice from Associate Justice J.G. Knapp, that he will be in attendance at some early day.

It is ordered that Court adjourn until to-morrow at four O'clock in the afternoon.

3rd Day. Supreme Court. Wednesday, July 8th 1863.

Court convened as upon yesterday

Present as on yesterday,

There not being a quorum of Judges present,

It is ordered that Court adjourn until to-morrow at 4. O'clock P.M.

4 Day. Supreme Court. Thursday, July 9th 1863.

Court met pursuant adjournment.

Present as on yesterday

Thereby being a quorum of Judges present.

It is ordered that Court adjourn until to-morrow at 10 O'Clock A.M.

5. Day. Supreme Court. Friday, July 10th 1863.

Court met pursuant to adjournment.

Present as on yesterday - except,
Theodore D. Wheaton Esq, 2nd. District Attorney -

It is ordered by Chief Justice, the Hon, Kirby Benedict, the only Judge present, that Theodore D. Wheaton Esq, 2nd. District Attorney, be allowed for four days necessary attendance on this term of the Court, and ~~ miles travel from his place of residence to Santa Fé, the place of holding said Court and returning.

Ordered further that, Abraham Cutler be allowed for four days necessary attendance, on the Court during the present term thereof.

5th Day. Supreme Court, Friday, July 10th 1863.

Ordered further that Francisco Montoya, be allowed, for four days attendance, on this Court, as Bailiff thereto—

Ordered further that Abraham Cutter, Incr. shall be allowed Dollars for Stationery furnished by him, for the use of the Court, at the present term.

Ordered further that Samuel Allison, Esq, be allowed, for five days necessary attendance on this term of the Court, as Clerk.

Hiram Bennett
Chief Justice

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Supreme Court, January Term, 1864. Monday 4th

A regular term of the Supreme Court of the Territory of New Mexico begun and held at the Court House, in the City and County of Santa Fé, on the first Monday of January 1864, being the 4th day of said Month,

Present.

Hon. Kirby Benedict Chief Justice of said Territory
Theodore D. Wheaton Esq. Dist. Atty.
Abraham Cutler " Dist. Marshal.
Samuel Ellison " Clerk of said Court,
Charles P. Clever Esq. Attorney Genl. of said Territory.

There not being a quorum of Judges present it is ordered that Court adjourn until to-morrow at 2, O. Clock, P. M.

Supreme Court, Tuesday January 5th 1864,

Present as of yesterday,

Court met pursuant to adjournment.

A quorum of the Judges not having yet appeared,

It is ordered that Court adjourn until to-morrow at 2, O. Clock, P. M.

Delaware Court. Wednesday January 6th 1864.

Court met pursuant to adjournment.

Present as on yesterday.

A quorum of the Judges not having yet appeared.

It is ordered that Court adjourn until to-morrow at 2. Oclock P. M.

Delaware Court. Thursday. January 7th 1864.

Court met pursuant to adjournment.

Present as on yesterday

A quorum of the Judges not having yet appeared.

It is ordered that Court adjourn until to-morrow at 2. Oclock P. M.

Supreme Court. Friday January 8th 1864.

Court met pursuant to adjournment.

Present as on yesterday.

From L.G. Knapp

This day Communication was ~~this day~~ received and read in open Court, stating his reasons for his absence from this Court which was ordered to be filed by the Clerk, and permission granted to ~~him~~ act with some upon the record.

A quorum of Judges not having arrived yet,

It is ordered that Court adjourned until to-morrow at 3. O'clock P. M.

Supreme Court. Saturday January 9th 1864,

Court met pursuant to adjournment

Present as on yesterday.

A quorum of Judges not being present

It is ordered that court adjourn until Monday next at 3. O'clock P. M.

Supreme Court. Monday January 11th 1864.

Court met pursuant to adjournment.

Present as on Saturday last.

A quorum of the Judges not being present.

It is ordered that Court adjourn until
to-morrow at 2 O'clock P.M.

Supreme Court. Tuesday. January 12th 1864.
Court met pursuant to adjournment,
Present as on yesterday.

It is ordered by the court, that Jose Guadalupe
Gonzales, be allowed for two days services
as Bailiff on this term of the Court.

The members of the Bar of the Supreme
Court presented the following Preamble
and Resolutions, which are ordered to be
spread upon the record which is done
and are as follows to wit:

Whereas, we members of the Bar
of the Supreme Court of the Territory
of New Mexico, have seen with deep
regret that an unjust and as we deem
a malicious attack has been made upon
the standing and character of the Hon.
Kirby Benedict Chief Justice of this Terri-
tory by Gen. N. M. Pino. Esq.

We do therefore resolve that
as we have always had and still have

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Supreme Court, Tuesday, January 12, 18[illegible]

an abiding confidence in the loyalty integrity and uprightness of the Hon. Kirby Benedict Chief Justice of this Territory

Resolved further: That in our opinion the people of this Territory are greatly indebted to him not only for his unremitting attention to his own duties, but also for his attention to the duties of his associate justices by holding their Courts during their absence from the Territory.

Resolved further: That in our opinion, the said Chief Justice is entitled to the full confidence of the administration not only for his ability and legal attainments, but also for his experience as well as in his strict attention to his duties to the interests of the United States aid to those of this Territory, and that we would look upon his removal as a serious misfortune misfortune to the interests of the people of this Territory as well as to the government of the United States,

It is ordered that Theodore D. Wheaton Asst. Dis. Atty. be allowed fourteen days necessary attendance of this court, and also for 240, miles travel from his place of residence to Santa Fé, the place of holding court, and returning,

Ordered further that Theodore Wheaton, Asst. Dis. Marshal for this Territory be allowed for eight days attendance on this Court,

Supreme Court, Tuesday January 13, 1863

On motion of H. Ashurst, Esq, an Attorney of this Court, Thomas J. Gutierrez Esq, and Frank. Higgins Esq, were admitted to the practice of law in the Supreme Court of the Territory of New Mexico,

Ordered that Samuel Ellison, Clerk of this court be allowed for eight days attendance thereon,

Ordered that the following Communication from Judge Knapp be spread upon the record.

When the law requires a public officer to perform a specific duty, and he fails to do the same, and thereby the public and private interests fail, of that attention which is due to them, such officer ought to have good and sufficient cause for his conduct. I shall not be in Santa Fé, to attend to the January term of the Supreme Court, for reasons which I consider good and sufficient. The Organic act of this Territory provides that "the Supreme court shall consist of a Chief Justice and two Associate Justices, any two of whom shall constitute a quorum and who shall hold a term at the seat of government of said Territory Annually." It also provides that "the said Judges shall after their appointments respectively reside in the District which shall be assigned them." On the 28th of January 1863, the Legislature assigned me to this, the third District; and I soon after removed to this place, and have resided here ever since. Some years ago, the Legislature fixed the term of the Supreme Court on the first Monday of January at which time the court has heretofore met for its annual sessions. The Act of Congress of March 3rd 1863, has attached the Eastern District of El Paso, covering all the frontier from the mouth of the Rio in Texas to the mouth of the Colorado in Arizona, to this Judicial District, for the trial of all questions which may require the sentence of a court. This is a new Judicial District

Supreme Court, Tuesday, January 12th. 1864.

Another term have been fixed for the trial of Causes in which the United States is a party, no can there be any until there be a meeting of the Judges of the Supreme Court of the District at Santa Fé in a regular session. Consequently no trial for violation of the revenue laws, or for crimes committed against the laws of Congress, as well as cases under the Confiscation acts, or civil actions by the United States, can be had in the District. There is a vacancy in the second District, and therefore, as I cannot go to Santa Fé, there will be no grand jury, and no term of the Supreme Court, and no terms fixed for this District. The public interests, as well as private, must be delayed perhaps endangered.

Feeling the great need of action by the Supreme Court and notwithstanding the fact of the great danger of the Journada from Indians, by whom an Officer of the Army attended by his escort, and the mail carrier travelling alone had been killed, in the month of June last, yet I prepared to go to Santa Fé, to attend a term on the first Monday of July last, and was only prevented from starting in consequence of dangerous sickness in my family, so as to render it nearly impossible for one to leave home. Again on the 2nd. of November 1863, I prepared to go to Santa Fé, so as to have time to rest from the fatigues of the journey, before the meeting of the court, accordingly I took passage in the mail stage for that place, which with its mail was stopped in the streets before leaving this town, by the military officer of the day, and I was told that I could not go unless I would so far submit to military orders, as to take the oath of allegiance to the government, and receive a "pass" by which I should have to report there, and at all intermediate stations, Returned from that I was going upon Official business, more of no avail, I could only leave under the military order I chose refused to do, more like as the

Supreme Court, Tuesday, January 12th. 1864,

Associate Justice of the Supreme Court, of this Territory submit to these unlawful and unreasonable demands in order to discharge my duties under the law, As L. cannot go without such submission, I shall not go at all. I have the desire to sit myself right upon the record, as the Judge of this Territory, I have taken all the oaths, which Congress has seen fit to impose upon its Officers. These oaths I shall most religiously keep to the end. On January last, Lincoln, during the setting of the Supreme Court, arrested and placed in the guard house for non-compliance with a Military order, which order is still, as I am informed in force, and the conduct of the Provost Marshal, in my arrest and all treatment meets the approval of the General Commanding the Department. After the adjournment of the Court, I could not return to my home and District, until I had submitted to the same arbitrary dictation, and procured a "Pass" So I again appeared to the commanding, and required to submit to martial government, in order to perform the duties imposed upon me by Acts of Congress in this Territory, which the Commandant of the Department has declared not to be under martial law, is more than I shall submit to. If I cannot perform my Official duties freely, I will not perform them at all. I do not believe I shall break a Military order by this refusal.

The government of the United States, has confided to my keeping, trusts which I will keep as far as I can. And among other things to decide and adjudge upon acts of treason and treasonable practices and men of allegiance to the government. Men not suspected much less presumed in the Judges of the Court. Whenever they shall appear on that point, the breadth of a hair, they deserve as they will receive the sentence provided for such a Crime. The Judge in his Official Capacity, and Courts in their adjudications and decisions must be free to act and decide untrammelled, even by Executive orders, and only to follow

Supreme Court. Tuesday, January 12th. 1864.

executive advice, what that advice considered with their judgment of the requisites of the law, and constitution: United States vs. Benson, 15. Pet. 162. Kittera vs. Parsons 1 Cranch 175. Lawrence's Wheaton on Int. Law 190, n 66: much rather should they be free from the dictates of military commanders.

It may be, and ever has been objected, that the judge of this court should submit more readily to this regulation, than any other man in the community, for the sake of the example. That is a question of policy about which men may entertain different opinions, and upon which I must be permitted to entertain my own. The effect of example may be for the evil of a court, as well as for its good. And a man may as completely overthrow a good government, by silent compliance with unwarranted imposition, as by acts of hostility. Had every lover of the constitution, in the seceded States, refused to give obedience to the acts and ordinances of secession, it may well be questioned, whether the rebellion, would have been as powerful, as it has proved to be. Therefore, if my example be of any weight, in my opinion, I owe it to the community that it should be given as to the acts and ordinances which I consider to be in accordance with the law and the temper of the people, when I can. I consent to give it, when I believe it will have the contrary effect. And whenever I am required to yield obedience to unwarranted and illegal usurpation, which must end in the overthrow of the political and personal liberty and rights secured to the people of the United States, by the constitution and the laws of the United States, I shall refuse to obey such requirements, unless compelled to do so by brute force. I deny to any man below the President and Congress the power legally to take those rights from me, even temporarily from me: and if they be temporarily taken they must be restored to me as soon as the necessity for taking them away no longer exists.

Whatever necessity there may have been for

Supreme Court, Tuesday, January 19th 1864.

the enforcement of Martial regulations, when the rebels were possession of some portions of Territories, that necessity no longer exists, any more than it exists in Ohio and Pennsylvania; and as in those States, so the people here, ought long since to have been restored to all their former rights and privileges. The rebel forces were completely broken in March, and April 1862, and they entirely withdrew from every portion of the Territory, on the 4th of July 1862, and since August of the same year there has been no armed enemy, nearer than Fort Davis, Texas, All that time the Courts of the Territory, have been in full operation. The rule given by Lord Coke in his commentaries good enough for me, at least, until some higher authority establishes a better, he says; "When the Courts of Justice and the Judges and Ministers of the same may by law protect men from wrong and violence and distribute justice to all, it is said to be time of peace. But when by invasion, insurrection, rebellion, or such like, the peaceable course of Justice is disturbed and stopped, so as the Courts be open shut up, et silent inter leges arma, then it is said to be time of war." Lib III Cap 6. P. 412. Under this rule, I insist that the citizens of New Mexico, ought to be as free to day, as they were ever since the passage of the Organic Act, and I cannot by my example countenance any conduct in violation of that liberty.

The power to legislate and make rules for the government of New Mexico, and its citizens is vested exclusively in Congress Am Ins. Co. vs Canter 1. Pet. 511. and as a Judge if appointed under that legislation and compelled to pay obedience to the same, I cannot consent to its violation. If the Commander of the United States forces in New Mexico, may proclaim and continue martial law and rule in force in this Territory, and compel obedience to them by the citizens, for a year and a half after

Supreme Court, Tuesday, January 12th 1864,

the necessity for this proclamation has ceased, he may continue it indefinitely, and thus press the whole Territory under a despotism. Under the orders as they now exist, the Judges of the Court, members of the Legislature, the officers of the Territory and Counties, are obliged to get leave of the Military to travel in the discharge of their official duties, a power which cannot be found in the worst of the despotisms of Europe. In all other countries the commission or patent of the Supreme government, to its officers, is all the passport ever required, and any attempt to stop a public minister would be visited by the most severe punishment. It was reserved for the Military Commander of New Mexico to set this example to the world, I cannot, nor will not submit to it. The public interests demand my presence in Santa Fé, but public freedom, and the liberty of the people, in a greater degree requires me to resist and oppose all attempts to trample down that freedom and liberty. As my oath of office requires me "to support and defend the Constitution of the United States, against all enemies foreign and domestic, and bear true faith and allegiance to the same;" I shall maintain and keep the same oath, as well against those who want to overthrow it while in the hands of the government, as in the days of the rebellion. The latter I will meet armed by both honor and my hands, the former by the means pointed out by the laws, and a submission to the General Government. Believing that my position is both rights and lawful, I shall abide the result in full faith and hope. Others have taken upon themselves the responsibility of doing the damages if any accrue to the people welfare. Both of us cannot be right. If we are a free people, I am right, if under a despotism, then I am wrong, and if under the latter, other must act as judges, I submit.

Signed. A. B. Knaefle

1st Day Supreme Court, July 4th 1864.

At a regular Term of the Supreme Court, begun and held at the City of Santa Fé, On the first Monday of July 1864, Territory of New Mexico, being the 4th day of said Month,

Present

Hon. Kirby Benedict, Chief Justice of said Territory,
Hon. H. G. Knapp, Associate Justice,
Theodore D. Wheaton, U.S. Dis. Atty.
Saml. Ellison, Clerk of said Court,

William Kirby Esq. presented his appointment as Deputy Marshal and entered upon the duties of said Office.

Order fixing terms of Court in the 3d Judicial District New Mexico

United States of America,
Territory of New Mexico } S.S.

It is ordered.

1st That the Terms of the District Court in which causes in which the United States are parties may be tried in the third Judicial District of the Territory of New Mexico, are hereby fixed at the town of the Mesilla in the County of Doña Ana, to commence on the first Monday of February, June and November in each year and to continue in session until all the business before said Court is disposed of.

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1st Day. Supreme Court. Aug 4th 1864,

Ordered that Court adjourn until to-
morrow at 10 Oclock A. M.

Kirby Benedict

Joseph G. Knapp.

2. Day. Supreme Court. July 5th 1864,

Court met pursuant to adjournment,

Present as on yesterday.

It is ordered that Theodore D. Wheaton Esq
U.S. Dis. Attz. be allowed for two days ser-
vices on this Court, and also 240. Miles travel
from his place of residence to the place
of holding Court. and returning.

It is further ordered that Abraham
Cuttyr Esq be allowed
Cuttyr, for two days attendance on this Court
by his Dep. ty Marshal William Kirby.

It is further ordered that Samuel Ellison
Clerk of this Court be allowed for two days
necessary attendance on this Court,

Ordered that all Causes pending in this Court, are
hereby continued,

Ordered that Court adjourn until to-morrow morn

Kirby Benedict

J. G. Knapp

1st Day, Supreme Court, January Term 1845.

At a regular Term of the Supreme Court of the Territory of Iowa, begun and held at the Court House in said Territory on the first Monday of January 1845.

Present

Hon Mitchell Chief Justice of said Territory

Hon Thos S. Mitchell, Associate Justice

Col Jas Clarke Atty Gen. Wm. Marshal Esq Clerk

Theodore S. Wilson Esq Atty for Jos. Attorney

Jere D. Wood Esq Sheriff of Clayton Co.

Samuel Ellison Esq Bailiff

The Marshal now returned the writ of Subpoena issued by this Court in favor of Wales Lefferty Bailiff to this Court for the defendant and he duly sworn as such

Joel Haughton Esq an Attorney of this Court now presented the application of Wales Lefferty to be admitted as an Attorney and Counsellor at Law and Solicitor in Chancery to practice in all the Courts in this Territory

Whereupon it is ordered by the Court that all the members of the Bar, now present in Court, be appointed Commissioners to examine into the facts and qualifications of the said applicant to be admitted as Attorney and Counsellor at Law and Solicitor in Chancery.

The United States,

vs.

Rafael Armijo and
Manuel Armijo

} Writ of Error.

This day came the Plaintiff by Atty Gen. of the Territory and the defendants

1st Day. District Court. January Term 1845

by their Counsel come the Court from
hence the Clerk of this 3rd Judicial District
Court of this Territory to which the Writ
Process and proceedings are filed and Complete
Transcript of the Jurors and Witnesses in this
Cause as appears in his Office

It is ordered that Court adjourn until to-
morrow Morning at 10 O'clock

Hiram Bennett
Clerk

2nd Day. District Court. January Term 1845

Present as on yesterday.

Counsel & Parties to adjournment

Juan Baptista Vigil, Plaintiff
Antonio Maria Trujillo, Jose Miguel Sanchez
vs.
The United States } Original Suit.

And now on this day came the
said parties by their Counsel, whereupon the
plaintiffs introduced Hezekiah Beckwith Esq
as a witness in this behalf, and said Witness
being duly sworn, proceeded to testify, and
his testimony being reduced to writing by
the Clerk in the presence of the Court,
and signed by said Witness - the plaintiffs then
announced to the Court that they had closed
their testimony in their behalf

3rd Day, Supreme Court, January Term 1865.

And on motion of the said Defendants by their Counsel, Leave is granted them to take testimony in open court in their behalf.

This day James Corbin Esq. an applicant for admission to the Bar, appeared in open Court and it appearing to the satisfaction of the Court, that the said James Corbin, is of good Moral Character, and in all other respects qualified Whereupon, the said James Corbin Esq. was sworn to support the Constitution of the United States. and in all things to demean himself faithfully and honestly as a Counsellor and an Attorney at Law and Solicitor in Chancery, Whereupon it is ordered by the Court that the said James Corbin Esq. be admitted to practice as an Attorney and Counsellor at Law and Solicitor in Chancery, in the several Courts of the Territory of Washington.

Thereupon the said James Corbin Esq. took and subscribed the oath of Allegiance as required by Law and the rules of this Court.

The United States,
to
The Sheriff of
Wash. & Morg. County. } Writ of Error

This cause came on to be heard upon the motion of Guy Doty, one of the Counsel learned by her Counsel aforesaid upon the Clerk of the 2nd Judicial District Court, to send up to this Court forthwith a full and Complete transcript of the papers and proceedings in said Cause. And the same being heard, It is Ordered by the Court, that the clerk of the 2nd Judicial District Court, send up to this Court forthwith a true and perfect transcript together with all the papers which have been

2nd Day, Supreme Court, January Term 1861.

filed in his office and now remain to said cause and that the Clerk of this Court, issue a citation to the said Clerk of the 2d Judicial District Court, in conformity with this order.

Eduardo Martinez Appellants
vs.
The Trustees of Socorro Precinct } Appeal, San Miguel County.

By agreement of the said parties by their Counsel, this cause is continued until the next term of this Court.

Edward Homberger Appellant,
vs.
The Trustees of Socorro Precinct } Appeal, San Miguel County.

By agreement of the said parties by their Counsel, this cause is continued until the next term of this Court.

Lorenzo Vigil, Appellant
vs.
David Mc Cormick } Appeal, Mora County.

By agreement of the said parties by their Counsel, this cause is continued until the next term of this Court.

Jose Leandro Martinez Appellant,
vs.
Maria Refugio Pino and
Miguel Romero y Baca } Appeal San Miguel County.

By agreement of the said parties by their Counsel this cause is continued until the next term of this Court.

3rd Day. Supreme Court, January Term 1865.

Ordered that Court adjourn until to-morrow at 10. O'Clock A. M.

Henry Bennett.
Sydney Ashbell

3rd. Day. Supreme Court, January Term 1865.

Court met pursuant to adjournment,
Present as on yesterday —

Juan Bautista Vigil y Alarid,
Antonio Rivera & José Inigo Hondo
vs.
The United States

Original
Writ

And now again on this day come the parties by their Counsel, and proceed in open Court, to take the depositions upon the part of the United States, of Charles Bluminer, Merrill Delmont, Richard Fb, Tompkins and William H. Hunny, and the same were severally taken and reduced to writing by the register and by the respective witnesses.

And now both parties having concluded taking of depositions in this cause,

It is ordered by the Court, that this Cause be set down for hearing for the introduction of proofs, and arguments of Counsel from Friday next, the 6th. instant,

3rd. Day, Supreme Court, January Term 1863.

And now Merritt Ashurst Esq, an Attorney of this Court, moves the Court that Stephen B. Elkins Esq, be admitted to practice as an Attorney and Counsellor at Law and Solicitor in Chancery in all the Courts in this Territory.

Whereupon, the Court appointed the members of the Bar present a Committee to examine the said Stephen B. Elkins, as to his learning, qualifications and fitness to be admitted as an Attorney at Law: and the said Committee having made such examination, reported to the Court, that they found the said Elkins, learned, qualified and fit for the profession of Law.

And thereupon the said Stephen B. Elkins, appeared, and in open Court took his solemn oath in due form to support the Constitution of the United States, and to demean himself honorably honestly and faithfully and to the best of his skill and abilities as an Attorney and Counsellor at Law and Solicitor in Chancery in the Courts of New Mexico.

Whereupon, it is ordered and adjudged by the Court, that the said Stephen B. Elkins be and hereby is admitted to practice as such Attorney and Counsellor at Law, and Solicitor in Chancery in this Court, and in all the Courts of this Territory upon his taking the oath of loyalty and Allegiance prescribed by the Government of the United States and the rules of this Court. Whereupon the said Elkins took and subscribed the said oath of Allegiance, which is filed with the Clerk.

3. Day, Supreme Court, January Term 1865.

Ordered that Court adjourn until to morrow at 10. Oclock A. M.

Kirby Bennett.
Sydney A Rutherhill

4th Day, Supreme Court, January Term 1865.

Court met pursuant to adjournment,

Present as on yesterday,

Samuel Archer } Plaintiff in Error
vs. } Writ of Error from Dona
Patrick Ingoe } Ana County.
Defendant in Error.

Now on this day came the parties by their Counsel, and defendant by his Counsel moves the Court to quash the Writ of Error in this case, and dismiss this cause from this Court, for reasons filed,

And the said motion having been argued by Counsel, as well for the defendant in Error as for the Plaintiff in Error, and the Court now being sufficiently advised in the premises.

It is ordered and Adjudged, that the said motion be and hereby is overruled.

And thereupon the defendant in Error by his Counsel, files his joinder in Error herein.

4th. Day. Supreme Court January Term 1865.

Ordered that Court adjourn until to-morrow at 10. O'clock A. M.

Hiby Bennett
Sydney A Hubbell

5th. Day. Supreme Court, January Term 1865.

Court met pursuant to adjournment

Present as on yesterday.

The Court now appoint Samuel Ellison, Translator to this Court, who appears and in open court was duly sworn as such.

Juan Bautista Vigil y Alarid.
Antonio Jose Rivera
Jose Miguel Howard
vs.
The United States } Original Writ.

This being the day set for the argument of this cause the parties appeared by their Counsel and proceeded to the introduction of proof on the part of plaintiff and other matters to conclude the cause on this day this Court is continued until to-morrow.

Ordered that Court adjourn until to-morrow at 10. Oclock A. M.

Hiby Bennett
Sydney A Hubbell

6th Day. Supreme Court January Tim 1865.

Court met pursuant to adjournment.

Present as on yesterday.

Juan Bautista Vijil y Alard
Antonio José Rivera &
José Miguel Alarcón,
vs.
The United States } Original Suits.

This day came again the said parties by their Counsel, and the introduction of testimony was continued, on the part of the plaintiffs. and there not being time to conclude the same, this cause is continued until to-morrow at Monday next, at 10. Oclock A. M.

Ordered that Court adjourn until Monday next, at 10. Oclock A. M.

Hiley Bennett,
Sydney Webber

7th Day, Monday, January 9th 1865.

Court met pursuant to adjournment.

Present as on Saturday last,

Juan Bautista Vijil y Alard,
Antonio José Rivera. and
José Miguel Alarcón
vs.
The United States. } Original Suits.

This day came again the parties

7th Day, Supreme Court, January 9th 1865.

by their Counsel, and the introduction of testimony is continued on the part of the plaintiffs and there not being time to conclude the same, on this day this Cause is continued until to-morrow.

Ordered that Court adjourn until to-morrow half past nine Oclock A. M.

Hiram Barrett
Sydney A Norbell

8th Day, Supreme Court, January 10th 1865.

Court met pursuant to adjournment.

Present as on yesterday.

Juan Bautista Vigil y Alaid
Antonio José Chaves and
Jose Miguel Otero
vs.
The United States } Original Suit

This day came again the parties by their Counsel and the introduction of testimony was concluded by both parties, and the plaintiffs by their Counsel, tendered a Bill of Exceptions, to the refusal of the Court, upon yesterday to admit certain parts of evidence offered by the plaintiffs and returned in the said Bill, which Bill is now signed by the Chief Justice, as a part of the proceedings of this Cause.

8th day. Supreme Court January 10th 1865.

This cause was this day argued by John A. Watts Esq on the part of the plaintiff whereupon it is ordered by the court, that this court stand adjourned until to-morrow at 10 oclock A. M.

Hiram Benedict
Sidney Corbett

9th Day Supreme Court January 11th 1865.

Court met pursuant to adjournment.

Present as on yesterday.

Juan Bautista Vigil y Alaid,
Antonio José Ortiz and
José Miguel Sandoval
vs.
The United States } Original Suit

This day came again the parties by their Counsel whereupon on motion of the United States District Attorney, this cause is continued until to-morrow at 10 oclock A. M. for the purpose of giving further time to prepare his argument.

Ordered that Court adjourn until to-morrow at 10 oclock A. M.

Hiram Benedict
Sidney A Corbett

10th. Day. Supreme Court, January 13th 1865.

Court met pursuant to adjournment

Present as on yesterday -

Samuel Archer
vs.
Patrick Moore } Writ of Error from Dona Ana

This day came the parties by their Counsel, and by their agreement submit this cause for the judgment of the Court without argument.

Juan Bautista Vigil y Alencl.
Antonio José Rivera and
José Miguel Houck,
vs.
The United States } Original Suit.

This day came again the parties by their Counsel, and this cause was argued on the part of the United States by Theodore D. Wheaton Esq. United States District Attorney. and on the part of the plaintiffs by Joab Houghton Esq. Whereupon the parties by their Counsel announced the arguments of this cause closed, and submitted the case to the Court for its judgment.

Ordered that Court adjourn until to-morrow at 10. Oclock A. M.

Kirby Benedict.
Sydney A Mubbell

11th Day. Supreme Court, January 18th 1865.

Court met pursuant to adjournment.

Present as on yesterday.

David S. Garland. }
vs. } Appeal,
Charles B. Clark, et al }

On motion of the said plaintiff by his counsel, this cause is continued until the next term of this court.

Juan Bautista Vigil y Alaird, }
Antonio José Rivera and }
José Miguel Sanchez, } Original Suit,
vs. }
The United States }

This day came again the parties by their Counsel and this cause heretofore submitted for the judgment of the Court yesterday and the Court not being sufficiently advised as to the judgment or decree it should render therein, takes this cause under advisement until the next term of this court,

It is ordered that Manuel Chaves, Interpreter for this court, duly certify to the correctness of the translations by him made and to be made of the Spanish papers and documents in evidence in this cause, as translator by authority of this court, and that he be allowed reasonable charges for making such translations,

11th Day. Supreme Court. January 13. 1865.

Samuel Archer, Plaintiff in Error
vs. } Error from
Patrick Moore, Defendant in Error } Dona Ana.

And now on this day again come the parties by their Counsel, and this cause having been submitted for the judgment of the Court upon yesterday and the Court now being sufficiently advised as to the judgment it should render herein. It is Ordered and Adjudged, that the judgment in this cause rendered in the Court below, be and the same hereby is reversed, And that the proceedings in the Court below, after the filing of the Petition with cause be set aside and that this cause be remanded to the District Court for the County of Dona Ana, for proceedings in that Court, de novo. and that the plaintiff in Error recover of the defendant in Error, his costs in this cause as well as in the Court below laid out and expended and that execution issue therefor

Written opinion of the Court in this case to be filed by Chief Justice Wyndett.

Orders, fixing the times and places for holding terms of Court, in the several Judicial Districts in this Territory for three years, under the Act of the Legislature

The majority of the Supreme Court, being now Assembled at the Seat of government at Santa Fé, in New Mexico do now, in open Court, Order and Decree, that the places for holding Courts, in the first Judicial District as now established by the Legislative Assembly of said Territory, shall be at Santa Fé, in said District, Commencing upon the first Monday of March and August, in each year and Continue for the term of two weeks, unless the business shall be sooner disposed of,

11th. Day, Supreme Court, January 13th. 1866

By

In the second Judicial District commencing at Albuquerque, in said District on the first Monday of May and October, in each year and continuing until the end of two weeks, or the business shall be sooner disposed of.

In the third Judicial District upon the the first Monday in June and November, and continue for two weeks or until the business shall be concluded.

All cause heretofore commenced in any of the said Districts shall be conducted to conclusion, the same as if commenced within the Districts herein prescribed.

That all orders heretofore made touching the times and places of holding Courts in the various Districts in this Territory in which Causes, arising under the laws of the United States are commenced or should be tried and determined are hereby annulled and such causes shall be commenced or determined at the terms and places now determined by law.

The United States
vs.
The Property of
Rafael Armijo and
Manuel Armijo

Writ of Error from
Bernalillo County

This cause came on to be heard upon the motion of Guy Stoney, Claimant herein, by his Counsel Holmes and Elkins, upon affidavits filed, for a peremptory rule upon the Clerk of the second Judicial District to send up to this Court forthwith, a true and perfect transcript of all the papers, proceedings and record in his office, or pertaining to this cause in the case

11th. Day. Supreme Court. January 13th. 1865.

of the United States against the property of Rafael Armijo and Manuel Armijo, whether motion is granted by the court. And it is ordered by the court, that a citation in the nature of a certiorari issue forthwith from the clerk of this court, to the clerk of the said second judicial district court, in conformity with the motion herein granted, returnable by twelve O'clock M, on Wednesday next.

Ordered that Court adjourn until to-morrow at 3. O'clock P. M.

Kirby Benedict.
Sydney A Wobell

12th. Day. Supreme Court. January 14th. 1865.

Court met pursuant to adjournment.

Present as on yesterday.

There being no business presented by counsel, on this day.
It is ordered that Court adjourn until Monday next at 10. O'clock A. M.

Kirby Benedict.
Sydney A Wobell

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13th. Day. Supreme Court. January 16th 1865.

Court met pursuant to adjournment,
Present as on Saturday last.
There being no business presented by counsel,
this day
It is ordered that Court adjourn until to-
morrow at 10. o'clock A. M.

Kirby Benedict.
Sydney A Hubbell

14th Day. Supreme Court. January 17th 1865.

Court met pursuant to adjournment
Present as on yesterday.

There being no business presented by counsel
this day.

(It is ordered that Court adjourn until
to-morrow at 10 o'clock A. M.),

Kirby Benedict
Sydney A Hubbell

15th Day. September Court January A.D. 1866.

Court met pursuant to adjournment.

Present as on yesterday.

The United States.
The use,
The Property of
Rafael & Brunetta Arrieta
} Error from Bexar County

Now on this day come the parties by their Counsel and the plaintiff in Error, by leave by her Counsel, filed the amended transcript in this cause forwarded by the Clerk of the second District Court pursuance of the Citation issued, issued by order of this Court on a former day. And now the defendants in Error file their motion to dismiss the writ of Error in this cause.

Ordered that Court adjourn until to-morrow at half past nine O'clock A. M.,

Kirby Bennett
Sydney A Mitchell

16th Day. September Court, January A.D. 1866,

Court met pursuant to adjournment

Present as on yesterday,

It is ordered by the Court, that Theodore D. Wheaton Esq. United States District Attorney, be allowed for eighteen days after service on the Clerk of this Court a certified, for 240 miles travel from the place of residence to Austin the seat of this Court, and return,

16th. Day. Supreme Court, January 19th. 1866.

It is further ordered by the Court, that Abraham Butler Esq. United States Marshal for New Mexico, be allowed for eighteen days necessary attendance on this Court, and also, for 140. miles travel from his place of residence to Santa Fé, the place of holding Court, and returning.

It is further ordered by the Court, that Abraham Butler, U.S. Marshal for New Mexico, be allowed dollars, for fuel, stationery &c. furnished by him, for the use of this Court during the present term thereof, and also that he be allowed Thirty ~~Two~~ dollars, for rent of Court room and furniture at this term of the Court.

It is further ordered by the Court, that Juan Lopez, be allowed for fifteen days, attendance on this term of the Courts Bailiff.

It is further ordered by the Court, that José D. Sena, Sheriff of the County of Santa Fé, be allowed for fifteen days necessary attendance on this Court, at the rate of One dollar and fifty cents per day to be paid by the Territory.

The United States,
vs.
The Property of
Rafael and Manuel Armijo.

Error from Bernalillo County.

This day came again the parties by their Counsel, and the motion made yesterday to quash the writ of Error in this cause, and dismiss the case from this Court, came on to be heard, and was argued by Counsel.

16th Dec. Supreme Court of Errors, 1865.

upon both sides, and the Court, now duly & fully advised in the premises, doth order and adjudge, that the said writ of Error be quashed, and this cause dismissed from this Court, and that the Defendants in Error recover of the said Plaintiff in Error their costs in this behalf laid out and expended, and that execution issue therefor.

And now the said Ely Kopsy, Plaintiff in Error herein, by her counsel, moves the Court for an appeal from the judgment of this Court to the Supreme Court of the United States, which is granted by the Court, upon the said Ely Kopsy, her agent or Attorney entering into bond in due form, with security to be approved by this Court to the United States to prosecute her said appeal with effect and without delay, in the sum of one thousand dollars, and to answer and pay all damages and costs which may be adjudged against her on the said dismissal of said appeal.

And thereupon, Merritt Barrett, agent for the said Ely Kopsy, came into open Court, and entered into the bond as above required; with Charles P. Clever and Gadsby Clark, as securities, which bond and securities are approved by the Court, and the bond filed herein.

It is ordered that the Clerk make a true and perfect transcript of the papers, record and proceedings in this cause in the Court certify and transmit the same to the Clerk of the Supreme Court of the United States at Washington, in pursuance of the laws of the United States in such cases made & provided. Opinion of the Court to be filed in the cause by C. J. Cranch.

406, 16th Day. Supreme Court, January Term 1845.

It is ordered by the court, that Samuel Dickinson, Clerk, be allowed for sixteen days necessary attendance on this court.

It is ordered that court adjourn until court in course.

Hiby Bennett

Spencer Arbell

1st Day. Supreme Court. January Term 1866.

At a regular Term of the Supreme Court of the Territory of New Mexico, begun and held at the City of Santa Fé, on the first Monday of January A. D. 1866.

Present.

Hon. Kirby Benedict, Chief Justice of the Supreme Court of said Territory.

" Sidney A. Kibbey, Associate Justice of said Court.

" Joab Houghton, Associate Justice of said Court.

Theodore D. Wigginton Esq. Dist. Attorney for said Territory.

José D. Sena Esq. Sheriff of Santa Fé County.

Samuel Ellison Esq. Clerk of said County.

The Court now appoints Juan Mayo Bailiff to this Court, who appeared and was duly sworn as such.

On motion of A. Ashurst Esq. an Attorney of this Court, leave is granted to Parties until to-morrow to file assignments of errors—

Eg. Special Writ of
Peter Campbell & Co. et al
Pltfs. in Error. vs. Confiscation. Appeal.
Thos. Martin & Bro.
Error to the District Court of Dona Ana County 3d. Judicial District.

And now comes the Pltfs. in error by John S. Watts Esq. their Attorney and with leave of the Court now file herein the assignments of error upon the part of the Plaintiffs in error in this cause—

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1st Day. Supreme Court, January Term 1864.

F. S. Jacobright and,
James M. Richardson
vs. Confiscation. Appeal,
The United States
Error to the District Court of Dona
Ana County, 3rd Judicial District.

And now come the Plaintiffs in
Error by John S. Watts Esq, their Attorney
and with leave of the Court now files
herein the assignments of Errors upon the
part of the plaintiffs in error in this cause.

Ordered that Court adjourn until to-morrow
at 11 O'Clock. A. M.

Kirby Benedict
Presiding

2nd Day. Supreme Court, January Term, 1866.

January D. 1866.

Court met pursuant to adjournment

Present:

Hon: Kirby Benedict, Chief Justice
Hon: Sydney A. Hubbell, associate Justice
Hon: Geo. Houghton, associate Justice

and the other officers of the Court as on yesterday.

It is ordered by the Court, that Counsel desiring to file Briefs in the causes in which they are engaged, shall file the same before argument.

Samuel Ellison, Clerk of this Court, appears and took the oath of allegiance to the United States, in open court.

William A. Griffin, having been, with the consent of the court, appointed Deputy Clerk of this Court, appeared in open court, and took the oath of allegiance to the United States, and the oath of office, and entered upon his duties.

Robert Campbell et al
vs
The United States. } Confiscation Appeal C.
& District Court of Doña Ana County, 3d Judicial District.

And now again come the Plaintiffs in error, on this day by John S. Watts Esq. their attorney, who now with the leave of the Court, here file his Brief in this cause

Jabez S. Seeley, Appellant
vs
Solomon J. Holland, Appellee.

And now on this day, by leave of the Court, the parties to the above entitled cause, file an agreement in the certain

of the Court below upon the demurrer of the defendant Shelby to the first Count of the amended petition of the said plaintiffs.

Robert Campbell & Co et. al.
vs. Confiscation Appeal. Error to District
The United States Court of Doña Ana County.

This day came again the parties by their Counsel, and it is admitted by Theodore D. Wheaton Esq United States District attorney, that upon the trial of this cause in the court below, the loyalty of the plaintiffs Robert Campbell & Co. et. al. was duly proved. Also the execution of the notes of which copies are found in the record was duly proved, and said notes exhibited to the court, and said facts being omitted in the record, this admission is made to supply said omission.

And now comes Theodore D. Wheaton Esq. United States district attorney as aforesaid, and says there is no error in the judgment and proceedings of the United States District Court for the 3rd Judicial District, in and for Doña Ana County, in this cause.

This day, Theodore S. Greiner, Esq, an applicant for admission to the Bar, appeared in open court and it appearing to the satisfaction of the court that the said Theodore S. Greiner, is of good moral character, and in all other respects qualified.

Thereupon the said Theodore S. Greiner was sworn to support the constitution of the United States, and in all things to demean himself faithfully and honestly as a Counsellor and an Attorney at Law and Solicitor in Chancery, whereupon it is ordered by the court, that the said Theodore S. Greiner Esq. be admitted to practice as an attorney and Counsellor at Law, and Solicitor in Chancery in the several Courts of the Territory of New

2nd Day. Supreme Court, January 2nd 1866.

Mexico. Thereupon the said Frederick A. Greiner Esq took and subscribed to the oath of allegiance to the United States, as required by law and the order of this Court.

Eduardo Martinez, apltt
vs. Appeal from 1st Judicial District
The Territory Apllee. San Miguel County

By agreement of parties by their counsel, it is ordered that this cause be set down for hearing on next Thursday the 4th instant.

Eduard Homberger apltt
vs. Appeal from the 1st Judicial
The Territory Apllee District, San Miguel C

By agreement of parties by their counsel, it is ordered that this cause be set down for hearing on next Thursday the 4th instant.

Ordered that this court now adjourn until tomorrow morning at 10 o'clock

Kirby Benedict
Sydney A Dubbell
Intervention

3rd Day. January 3rd 1866.

Court met pursuant to adjournment. Present as on yesterday.

The Property of Simon Nart. apltt
vs. Appeal from El Paso County Texas
The United States. apllee.

On this day came the apellant by his attorney, C. P. Clever Esq. and asks leave of the court to file his assignment of errors. & the filing of which, the apellee by his attorney

3rd Day. Supreme Court. January 3rd 1866.

A Wheaton Esq. objects, whereupon, after hearing the argument of Counsel, the court overrules the objection to the filing of said assignment of errors in the court below, and thereupon said assignment of errors are now here filed.

Luis Sesny et. al. apfelt.
vs
Jose Secon et. al. apfellee.
} Apeal from 1st Jud. Dist. Bexar County

On this day came the apfellees by S. A. Elkins, Esq. their attorney, and move the court to dismiss the apeal in this cause, and the court after hearing the argument of Counsel overrules said motion.

The Property of
Henry A. & John A. Wicks. apfellants
vs
The United States, apfellee.
} Apeal from El Paso Co. Texas.

and

Robert Campbell Hoch et. al. apfelt.
vs
The United States. apfellee.
} Apeal from El Paso Co. Texas.

And now on this day came the apfellees Robert Campbell Hoch et. al. by their Counsel, John A. Wills Esq, as also the other parties in these causes by their counsel, and the cause having been argued by said Watts, and the other Counsel not now being prepared for the argument of this cause, it is Continued until another day of this term.

Ordered that this court now adjourn until tomorrow morning at 10. O'Clock

Kirby Benedict
By Geo. A. Shuck
Interpr

4th Day. Supreme Court, January 4th 1866.

January 4. 1866.

The Court met pursuant to adjournment. Present as on yesterday.

The Property a. Henry J. and John J. Gillett, et.al. Appellants
vs
The United States Appellee. } Appeal from Doña Ana County.

And now comes Theodore D. Wheaton Esq. attorney for the United States herein, and John S. Watts Esq, attorney for the appellants Robt. Campbell & Co. et. als, and with the assent of the said John S. Watts, the said United States District attorney, now moves the Court for leave to withdraw his joinder in error in this cause, and for a continuance of the same, upon the ground that the record in this cause, was not filed ten days before the commencement of this Court, and upon the ground that the appeal herein was not taken thirty days before the commencement of this court, and said leave to withdraw said joinder in error was refused, and the motion to continue said cause was overruled, to which opinion of the court, the United States District attorney excepts.

The Property of Simeon Hart et. al.
vs
The United States. } Appeal from Doña Ana County.

And now comes Theodore D. Wheaton Esq attorney for the United States herein, and John S. Watts Esq attorney for the appellant Thomas D. Thompson, and with the assent of the said John S. Watts, the said United States District attorney, now moves the Court for leave to withdraw his joinder in error in this cause, and for a continuance of this cause, upon the ground that the record in this cause was not filed ten days before the commencement of this court, and upon the grounds that the appeal herein was not taken thirty days before the commencement of this Court and said leave to withdraw said joinder in error

was refused, and the motion to continue said cause was overruled, to which opinion of the court, the United States District attorney excepted.

The Property of Irwin J. Crosby,
Simeon Hart, Henry S. Gillett
and John S. Gillett, situate in
El Paso County Texas Appellants
vs
The United States Appellee

Appeal from the 5th Judicial
District, Dona Ana County
Judge Houghton presiding

And now on this day came the appellants by Messrs Clever and Ellis their attorneys and move the court for leave to file the Transcript of the proceedings of the court below, which leave is granted, and said cause placed upon the docket of this court.

The Property of Henry S.
and John S. Gillett, Appellants
vs Appeal from Dona Ana County
The United States appellee

This cause came on again to be heard and was argued by John S. Watts, Esq attorney for the appellee, and by S. B. Elkins Esq, and C. P. Clever Esq for the appellants. and there not being sufficient time to conclude the argument on this day, this cause is continued until tomorrow

Ordered by the Court. - 1st

Any person, who shall hereafter be admitted by this Court to practice as an attorney, shall pay to the clerk for his use, the sum of Ten Dollars and the clerk shall issue to such attorney a certificate in apt form with license to practice as an attorney and counsellor at law and solicitor in Chancery in all the courts of this Territory.

Ordered by s. Court &c.

Every person who has been heretofore admitted by this court as an attorney may obtain from the clerk, a certificate in such form, & under such attorney has before or shall take at the time of subscribing the oath of Allegiance to the United States, as required by the Act of Congress, and for which certificate he shall pay to the clerk for his use, the sum of five dollars.

Leonard Sigmon, Appellant
vs Motion for a writ of Error
Gustave Eisberg and Jacob Amberg, Appellees

And now this day comes the Plaintiff by Jno. D. Watts, Esq his attorney and moves the Court for a writ of error to issue in behalf of the Plaintiff upon the record by him presented to the Court, and upon the examination of the said record, the Court doth deny the said motion and refuse the said writ.

Ordered that this Court do now adjourn until tomorrow morning at 10 o'Clock.

Riley Bennett
Sheriff
By Jerry Corbell
Deputy

January 2nd 1866

Court met pursuant to adjournment. Present as on yesterday, and Hon. Wm Carter Esq. U.S. Marshall who appeared in court on yesterday, but his appearance was not noted by the clerk, and is therefore entered here nunc pro tunc.

5th Day. Supreme Court. January 5th 1866.

Property of Henry J. and John C. Gallo. Appellants to
vs Appeal from Dona Ana County
The United States. Appellees

This cause came on this day to be again heard, and was argued by John D. Watts Esq and Thos. D. Wharton Esq on the behalf of the appellees, and by M. Ashurst Esq. on behalf of the appellants, and the court not being advised what judgment to render, takes time to consider of the same until tomorrow.

Ramon Heredia, Appellant.
vs Appeal from 3d Jud. District, Dona
Jose Maria Garcia, Appellee. ana C. J. Houghton

And now comes the said Appellant by J. B. McKinney, Esq his attorney, and has leave to file the Transcript of the record of the court below, and this cause is placed upon the Docket of this Court.

Ordered that this court now adjourn until tomorrow morning at 10 o'clock

Wiley Barnett
Sydney A Dubbell
J. Houghton

January 6th 1866.

Court met pursuant to adjournment.
Present as on yesterday.

P.C. Property of Simeon Hart
vs Appeal, from 3d Judicial District
The United States. Dona Ana County

This day came again the parties

6th Day. Supreme Court. January 6th 1868.

by their attorneys, and the United States District attorney S. D. Wheaton Esq. objects to the appearance of the appellant in this cause, because there was no appearance in the court below, and because the decree of that court in this cause was by default, and said objection being overruled by the court here, the said S. D. Wheaton Esq. attorney as aforesaid, says that there is no error in the judgment of the court below in this cause, and moves this court to dismiss the appeal herein, as to Simeon Hart for the reason that it is an appeal from a decree by default, and for the reason that there was no appearance of said Simeon Hart in the Court below. And said last mentioned motion being also overruled by the court, S. D. Wheaton Esq. attorney as aforesaid, moved the court for a Continuance in this cause, for the reason that the appeal in this cause was not taken thirty days before the commencement of this term as required by the Territorial laws of New Mexico, and because the Transcript of the record was not filed within ten days before the first day of the term, as required by said Territorial laws, and the argument of counsel being heard, the said motion is overruled.

Property of Henry S.
and John S. Gillet, Appellants:
vs
The United States, Appellee.

And now comes the United States by S. D. Wheaton Esq. District attorney, and moves the Court to dismiss the appeal of the said Gillets in this cause for the reason that there was no appearance of said Gillets in the Court below and that the judgment against them in that Court was by default, which motion is overruled by the court.

6th Day. Supreme Court. January. 6th 1866.

Leonardo Segovia. appellant.
vs } Motion for a writ of Error
Gustave Eckstein and Jacob Amberg. appellees.

This now comes the appellant by John S. Wells Esq. his attorney, and files his bill of exceptions to the opinion of the Court, refusing the writ of error in this cause, and such bill of exceptions is signed by the Court and ordered made a part of the record in this cause.

Thomas Heredia appellant
vs } Appeal from Dona Ana County.
Jose Maria Garcia. appellee

By consent of parties by their attorneys, this cause is continued until the next term of this court.

Juan Trujillo, Ambrosio Trujillo and José Dolores Trujillo } appellants
vs } Appeal.
Francisco Mestas appellee

By consent of parties by their counsel this cause is continued until the next term of this court.

Valentine S. Shelby appellant.
vs } appeal
Johnson Arthur, appellee.

By agreement of parties by their counsel this cause is set for hearing on next Monday, the 8th instant.

Jose Dionicio Gutierrez appellant
vs } Appeal from 1st Judicial Dist.
Maria Refugio Pino and } San Miguel County.
Miguel Romero y Baca } appellees

By agreement of the parties by their counsel, this cause is to be submitted to the court, without arguments on next Monday, the 8th instant.

6th Day. Supreme Court. January. 6th 1860.

Mary L. M. Crenshaw, James Jenkins & John Burrows and Jose A. Sena, } Appellants
vs. } Appeal from 1st Dist. Court Santa Fe Co.
Simon Delgado, admr of Alexr P. Morey deceased } Appellees.

By agreement of parties by their Counsel, this cause is to be submitted to the court without argument, on next Monday, the 8th instant

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Eduardo Martinez, Appellant.
vs } Appeal from 1st Dist. San Miguel Co
The Territory, Appellee.

This now on this day came again the parties by their counsel, and this cause having been argued by M. Ashurst Esq. attorney for the Appellant and by C. P. Clever Esq. attorney General for the Territory, and the court take time to consider of its judgment in the premises.

Edward Kimberger, Appellant.
vs } Appeal from 1st Dist. San Miguel Co
The Territory, Appellee.

This now on this day came again the parties by their counsel, and this cause having been argued by M. Ashurst Esq. attorney for the Appellant and by C. P. Clever Esq. Attorney General for the Territory, the court take time to consider of its judgment in the premises.

The Property of Henry L. and John L. Dent. } Appellants
vs } Appeal from Doña Ana County.
The United States } Appellee

This now on this day again came the parties by their counsel, and this cause having been on a former day argued by counsel on both sides, and submitted to the court for its judgment in the premises, Whereupon in consideration

premises, it is ordered, adjudged and decreed by the Court, that the judgment and decree in the court below be, and hereby is reversed and annulled and this cause remanded to the District Court for the County of Doña Ana, to be by the said court dismissed for the want of jurisdiction in said court over the Real Estate in county of El Paso Texas, libelled in this cause, at the costs of the United States in the District Court and in this Court.

The judgment of the Court was announced by Benedict Chief Justice; Justice Knaughton dissenting.

Leave is hereby given to each of the Judges to file their separate written opinions in this case during the present term, or in vacation

The Property of Clemens Kerk, appellant
vs Appeal from Doña Ana County
The United States, appellee

And now on this day came the parties by their Counsel and submit this cause to the court for its judgment and decree without argument.

Thereupon in consideration of the premises, It is ordered, adjudged and decreed by the Court, That the judgment and decree in the court below be and hereby is reversed and annulled and this cause remanded to the District Court for the County of Doña Ana to be by the said Court dismissed for the want of jurisdiction in said Court over the Real Estate in the County of El Paso, Texas libelled in this cause at the costs of the United States, in the District court and in this court.

The judgment of the Court was announced by Benedict Chief Justice - Justice Knaughton dissenting.

Leave is hereby given each of the Judges to file their separate written opinions in this case, during the present term, or in vacation.

7th Day. Supreme Court. January 8th 1866.

Ordered that this court adjourn until Monday Morning at 10 o'clock

Kirby Benedict
Sydney A Rubens
J. Houghton

Monday, January 8th 1866.

Court met pursuant to adjournment. Present as on Saturday

The Territory
vs
Gregorio Mera & Jack Collins, Appellees

Appellant.

Appeal, 1st Jud. Dist. Santa Ana Co.

And now on this day came the parties by their counsel, and this cause is submitted for the judgment of the court, and time is taken by the Court to consider of its judgment in the premises.

Ordered that this Court now adjourn until tomorrow Morning at 10 o'Clock

Kirby Benedict
Sydney A Rubens
J. Houghton

January 9th 1866.

Court met pursuant to adjournment. Present as on yesterday

The Territory
vs
Gregorio Mera and Jack Collins

Appeal from Santa Ana County

And now again came the

8th Day. Supreme Court. January 9th 1866.

parties by their counsel, and this cause having been submitted to the Court for its judgment upon a former day, and the Court now being fully advised,

Whereupon, in consideration of the premises, It is considered, ordered and adjudged by the Court, That the judgment of the court below in this cause be and the same hereby is affirmed.

The judgment and opinion of the court was delivered by Justice Kibbell. written opinion to be filed.

Valentine L. Sheby, appellant
vs
Johnson & Wetherd, appellees

Appeal from Santa Fé County

Now on this day came the parties by their counsel, and joinder of error having been made, the cause is now set down for argument, and thereupon the cause was argued on the part of the appellant by Theodore D. Wheaton Esq, and on the part of the appellees by C. P. Clever, Esq. and there not being time to conclude the argument upon this day the cause is continued until tomorrow.

Ordered that this court now adjourn until Tomorrow at 10 o'clock

Kirby Benedict
Sydney A Barker
J. Spencer Fitch

9th Day. Supreme Court. January 10th 1866.

Wednesday, January 10. 1866.

The Court met pursuant to adjournment.
Present as on yesterday.

Valentine S. Shelby, Appellant.
vs. } Appeal from Santa Fe, County.
James L Johnson Guy & Wethered, Appellees

And now on this day came again the parties by their counsel, and the argument on behalf of the appellees was concluded by Mr. Ashurst, Esq, and the argument on behalf of the Appellant being concluded by R. H. Tompkins, Esq, this cause is submitted for the judgement of the Court, and the Court takes time to consider of its judgment on the premises

Ordered that this court now adjourn until tomorrow morning at 10 O'clock

Kirby Benedict
Seymour Ambler
J. Houghton

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10th Day. Supreme Court. January 11th 1866.

Thursday, January 11. 1866.

The Court met pursuant to adjournment.
Present as on yesterday.

Luis Larouy and Maria Estefana Ortiz, Appellants
vs } Appeal from Mora County.
José Sacin, Julian Romero,
John M. Gager, Cornelio Mestas,
Manuel Antonio Mestas and
Grecia Mascareños } Appellees

Now on this day came the parties by their counsel, and joinder of error having been made, the cause is now set down for argument, and thereupon the cause was argued on the part of the appellants by C. P. Clever Esq and M. Ashurst Esq, and on the part of the appellees by A. B. Ecklis Esq and this cause is submitted for the judgment of the Court, and the Court takes time to consider of its judgment in the premises

Order of this court now adjourn until tomorrow morning at 10 O'Clock

Kirby Benedict

J. Houghton

Friday

11th Day. Supreme Court. January 12th 1866.

Friday, January 12. 1866

The Court met pursuant to adjournment
Present as on yesterday.

Ordered that this Court now adjourn until tomorrow morning at 10 O'Clock

Kirby Bennett
Sydney A Mashall
Attorneys

12th Day. Saturday, January 13th 1866.

The Court met pursuant to adjournment.
Present as on yesterday

James Thomas, Appellant,
vs
David H. McCormick, Appellee
} Appeal from Mora County

And now on this day came the parties by their Counsel, and this cause is now set down for argument, and thereupon the cause was argued on the part of the appellant by Theodore D. Wheaton Esq. and on the part of the appellee by R. H. Tompkins Esq and H. Ashurst Esq, and this cause is submitted for the judgment of the Court, and the court take time to consider of its judgment on the premises

Ordered that this court now adjourn until to-morrow next, at 10 O'clock A.M.

Kirby Bennett
Sydney A Marshall
Attorneys

13th Day. Supreme Court. January 15th 1866.

Monday, January, 15th 1866.

Court met pursuant to adjournment,
Present as on Saturday.

Valentino S. Sheby, appellant.
vs } Appeal from Santa Fé County.
James L. Johnson &
Jorge G. Watts } Appellees

This day came again the parties by their counsel, And the Argument upon the hearing having been concluded on a former day and the cause submitted to the court for its decision and judgment and the Court now being fully advised, Whereupon, on consideration of the premises, It is considered and adjudged by the Court that the judgment of the Court below, be and hereby is affirmed, with interest at the rate of Six per centum per annum since the rendition of the judgement in the Court below, and also the appellees the costs of the appellant, and also ten per cent damages upon the amount of the judgement and interest, together with the costs in this cause in the Court below and in this court, amounting to the sum of Eleven Hundred and eighty one dollars and eighteen cents.

And it appearing to the satisfaction of the Court, That Isaac H. Staab and Charles L. Thayer are securities upon the appeal Bond in this case, It is further considered and adjudged that the appellees have judgement against the said appellant and the said Isaac H. Staab and Charles L. Thayer securities in the sum of said judgment below with the interest and damages adjudged, and the costs below, amounting to eleven hundred and eighty one dollars and eighteen cents, and that execution issue from this Court

against the appellant and said securities.

Written opinions to be delivered and filed in writing.

José Leandro Gutierrez appellant
vs
Maria Refugio Pino, and
Miguel Romero y Baca appellees
} Appeal from San Miguel Co.

And now on this day came the parties by their counsel, and this cause is now set down for argument, and thereupon the cause was argued by C. P. Clever Esq on the part of the appellant and by R. H. Tompkins Esq, on the part of the appellees, and this cause is submitted for the judgement of the court, and the Court takes time to consider of its judgment

Aaron L. N. Cranshaw,
James Porter, John Barrow
and José A. Sena
vs
Simon Delgado, adm't
of Olivier P. Storey dec'd
} Appellants
} Appeal from Santa Fé County
} Appellee

And now on this day came again the parties by their counsel, and this cause is now set down for argument, and thereupon the cause was argued on the part of the appellants by C. P. Clever Esq. and M. Ashurst Esq and on the part of the appellee by R. H. Tompkins Esq and this cause is submitted for the judgment of the Court, and the Court takes time to consider of its judgment

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13th Day. Supreme Court. January 15th 1866.

James Thomas, appellant.
vs } Appeal from County of Huron
David H. McCormick appellee

This day came again the parties by by their Counsel, And the argument upon the hearing here concluded on a former day, and the cause submitted to the court for its decision and judgment, and the court now being fully advised, Whereupon in consideration of the premises, It is considered and adjudged by the court, That the judgement of the court below be and hereby is affirmed with interest at the rate of ten per cent per annum since the rendition of the judgement in the court below, such being the ~~contract~~ of the parties in the instrument upon which said judgement was founded, and also recover the sum of five per cent damages upon the amount of the judgement and interest, together with the costs in this cause in the court below and in this Court. amounting to the sum of Eight Hundred and Ninety six dollars and five cents.

And it appearing to the satisfaction of the court, that Vincent St. Vrain and Henry Beenbaum are securities upon the appeal Bond in this cause.

It is further considered and adjudged that the appellee have judgement against the said appellant and the said Vincent St. Vrain and Henry Beenbaum securities the sum of said judgement below with the interest and damages adjudged and the costs below, amounting to Eight Hundred and Ninety six dollars and five cents and that execution issue from this Court against the appellant and said securities

Written opinion to be delivered and filed in writing

13th Day. Supreme Court. January 15th 1866.

Eduardo Martinez, appellant
vs
The Territory, appellee.

Appeal from San Miguel County,
Indictment for carrying arms

And now again came the parties by their Counsel, and this cause having been argued upon a former day, and submitted to the Court for its decision and the Court now being fully advised,

Whereupon in consideration of the premises it is considered and adjudged by the Court here that the judgement of the Court below be and hereby is affirmed, and that the Territory, the appellee in this Court recover of the appellant Martinez the sum of fifty dollars fine adjudged against him in the District Court, together with her costs in the District Court, as also in this Court, and that execution to execute the judgement herein issue from this Court.

And it appearing to the satisfaction of the Court, by the Bond of the appellant in this cause and record, that
are securities upon the appeal Bond. It is therefore further considered and adjudged by the Court, That the said Territory recover of the said appellant Martinez and the said securities the sum of fifty dollars, the fine adjudged as aforesaid, as also the costs in the Court below and in this Court, and that execution issue from this Court

Opinion in writing to be delivered and filed.

13th Day. Supreme Court. January 15th 1866.

Edward Homberger, Appellant
vs
The Territory. Appellee

Indictment for carrying arms

Appeal from the County of San Miguel

And now again came the parties by their counsel, and this cause having been argued upon a former day and submitted to the court for its decision, and the court now being fully advised,

Wherefore in consideration of the premises, It is considered and adjudged by the court, that the judgement of the court below be and hereby is affirmed, and that the Territory, the appellee in this court, recover of the appellant Homberger the sum of fifty dollars fine adjudged against him in the District Court, together with her costs in the District Court, as also in this court, and that execution, to execute the judgement herein, issue from this court.

And it appearing to the satisfaction of the court by the Bond of the appellant in this cause and record, that

are securities upon the appeal Bond. It is therefore further considered and adjudged by the court, That the said Territory recover of the said appellant Homberger, and the said securities the sum of fifty dollars the fine adjudged as aforesaid, as also the costs in the court below and in this court, and that execution issue from this court.

Opinion in writing to be delivered and filed.

14th Day. Supreme Court. January 16th 1866.

Ordered that this Court now adjourn until tomorrow morning at 10 o'clock

Hiby. Bennett
By and Attached
J. Hamilton

14th Day. Supreme Court.

Tuesday, January 16th 1866.

The Court met pursuant to adjournment
Present as on yesterday

William Peyton, Appellant,
vs
José Manuel Cedeno Appellee
} Appeal from Mora County.

And now on this day came the parties by their Counsel, and this cause is now set down for argument, and thereupon the cause was argued on the part of the appellant by C. P. Clever, Esq. and J. D. McCalon Esq. and on the part of the appellee by H. N. Simpkins Esq. and this cause is reserved for the judgment of the Court; and the Court now being fully advised in the premises as to the judgement it should give: Therefore it is considered and adjudged by the Court, that the judgment of the Court below in this cause be and the same is hereby affirmed, and that the appellee recover of the defendant his costs as well in the Court below, as in this Court laid out and expended, and that execution issue from this Court to the Sheriff of the County of Mora for the collection of the same.

The Property of David F. Cassidy, Simon Hart Kenny & A. Gillett and Edward A. Gillett } Appellants
vs } Appeal from Dona Ana County
The United States Appellee

And now on this day came again the parties by their Counsel, and S. C. Wheaton Esq. United States District attorney, moves the Court to dismiss the appeal in this case, which motion is overruled, and thereupon the said Wheaton, for the appellee and the parties by their Counsel submit this cause to the Court for its judgment and decree without argument.

Therefore, on consideration of the premises It is ordered, adjudged and decreed by the Court, That the judgment and decree in the Court below, be and the same is reversed and annulled, and this cause be remanded to the District Court for the County of Dona Ana, to be by the said Court dismissed for the want of jurisdiction in the said Court over the Real Estate in the County of El Paso Texas, libelled in this cause, at the costs of the United States ~~in the District Court and in this Court~~.

The judgement of the Court was announced by Wendell Chief Justice, Justice Houghton dissenting.

Leave is hereby given each of the Judges to file their separate written opinions in this case during the present term or in vacation.

11th Day. Supreme Court. January 16th 1866.

Stephen Maguire and
Rafael Lucas
vs
Appellants
Appeal from Second Judicial District Court
Appellee

Now come the parties by their Counsel, and the appellants move the Court for a Rule upon the Clerk of the Second Judicial District Court to make up and send forthwith to this Court a true and perfect transcript of the proceedings in this cause, which motion is granted by the Court.

Louis Gross,
vs
Appellant.
Appeal from Valencia County.
The Territory,
Appellee.

Now come the parties by their Counsel, and the appellant moves this Court for a Rule upon the Clerk of the Second Judicial District Court to make out and send forthwith to this Court a true and perfect transcript of the proceedings in this cause, which motion is granted by the Court.

The Priority of Lewis Ault
vs
Petition for Mandamus
The United States

Now come the parties by their Counsel, and C. P. Clever Esq and S. B. Elkins Esq attorneys for the Petitioner move the Court for a Mandamus upon the Judge of the 3rd Judicial District Court, requiring him forthwith to cause to be brought and perfected a true record of the proceedings in this cause

14th Day. Supreme Court. January 16th 1866.

to this Court. And also comes T. L. Wheaton Esq. United States District attorney, and objects to the appearance of the petitioner in this court, and to the granting of the Injunction prayed for, which objection to the appearance was overruled by the Court.

And now Justice Naughton of the court and judge of the third District court in open court suspends and says, orally, That he has given no orders to the Clerk of said District Court to deny to parties requiring transcripts of causes, the making and furnishing of them such transcripts, and that he has communicated to said clerk that he may furnish transcripts when required. Whereupon the Court suspends any further action at this present time upon this petition.

David S. Garland, appellant.
vs
Charles B. Clark, and
Gustave Elsberg and Jacob Amberg } appellees

And now comes the appellant by Theodore L. Wheaton Esq his counsel, and on his motion this appeal is dismissed. It is therefore Considered by the court, That the appellees recover of the appellant their costs in this cause, and that execution issue from this Court to the Sheriff of Santa Fé County, for the collection of the same.

12th Day. Supreme Court. January 16. 1866.

Aaron L. M. Greenlee
James Porter, John Barnes } Appellants
and José D. Sena
vs } Appeal from Santa Fe. County
Simon Delgado, administrator
of Nicar P. Kavey, deceased } Appellee

And now come the parties by their counsel, and this cause having been argued on a former day by counsel on both sides, and the Court now being fully advised as to the decree to be rendered,

Wherefore, In consideration of the premises, It is ordered, adjudged and decreed by the Court, That the decree in this cause in the court below, be and hereby is affirmed with costs, and the Injunction in said court made, be and remain perpetual, and that the appellee recover of the appellants their costs in this court, as well as in the court below and that execution issue from this court to the sheriff of Santa Fe County for the collection of the same.

Opinion to be delivered and filed in writing.

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Luis Lucero and
Eight others } Appellants
vs } Appeal from Mora County
Jose Sacon, Probate Judge.
John M. Yager, Executor }
Mestas, Manuel Antonio Mestas } Appellees
and Gracia Mascarenas }

And now on this day again came the parties, and this cause having been heard in argument on a former day by Counsel on both sides, and the Court now being fully advised as to the judgment

14th Day. Supreme Court. January 16. 1866

should render Decree, Wherefore, In consideration of the premises, It is considered and adjudged by the Court that the judgement of the Court below in this cause be and hereby is affirmed with costs, and that the Appellees Recover of the Appellants their costs in this Court, as well as in the Court below, and that execution issue from this court to the Sheriff of the County of Mora for the collection of the same.

Written opinion to be delivered and filed.

José Leandro Gutierrez, Appellant
vs
Maria Refugio Pino, and
Miguel Romero y Pino, Appellees
} Appeal from San Miguel Co.

And now again come the parties by their Counsel, and this cause having been heard in argument, by Counsel on both sides, and submitted to the Court for its decision and judgement, and the Court now being fully advised in the premises, Wherefore, In consideration thereof, It is ordered, adjudged and decreed by the Court, That the Decree and judgement of the Court below in this case be, and the same hereby is affirmed, and that the Appellees Recover of the Appellant, their costs as are in the Court below as in this court, and that execution issue from this court to the Sheriff of San Miguel County for the collection of the same.

Written opinion to be delivered and filed

14th Day. Supreme Court. January 16. 1866.

The Property of Henry S. and John D. Sliett } Appellants
vs } Appeal from New Orleans County
The United States. } Appellee

And now comes Theodore D. Wheaton Esq. United States District attorney and files an affidavit herein showing the property in controversy in this cause to be of value exceeding one thousand dollars, and thereupon prays an appeal to the Supreme Court of the United States, which appeal is hereby granted.

The Property of Simeon Hart. Appellant.
vs } Appeal from Dona Ana County
The United States, } Appellee

And now comes Theodore D. Wheaton. Esq. United States District attorney, and files an affidavit herein showing the property in controversy in this cause to be of value exceeding one thousand dollars, and thereupon prays an appeal to the Supreme Court of the United States, which appeal is hereby granted.

The Property of Jesus G. Carby
Simeon Hart, Henry S. Sliett & John D. Sliett } Appellants
vs } Appeal from Dona Ana Co.
The United States. } Appellee

And now comes Theodore D. Wheaton Esq U. S. District attorney, and files an affidavit herein showing the property in controversy in this cause to be of value exceeding one thousand dollars, and thereupon prays an appeal to the Supreme Court of the United States, which appeal is hereby granted

15th Day. Supreme Court. January 17. 1866.

Ordered that this Court now adjourn until tomorrow at 4 o'clock P.M.

Wm Pickett
Sylvanus Ambrose
J. Houghton

Wednesday, January 17th 1866.

Pd Court met pursuant to adjournment,
Present as on yesterday.

By the Court,

The Judges of the Supreme Court now being assembled at the Seat of Government, and now in Session in open Court. It is by them ordered That the time and places of holding the United States District Court for the transacting of business under the laws of the United States, shall be, in the first District at Santa Fé in the County of Santa Fé, upon the Monday upon which the District Court for the Territory shall be fixed in the said County: and in the Second District in the County of Bernalillo in the town of Albuquerque, upon the Monday upon which the District Court of the Territory shall be fixed in the said County: And in the Third District in the town of Mesilla, in the County of Doña Ana upon the Monday which shall be fixed for the District Court of the Territory. And said Courts may continue in session until the business shall be disposed of.

15th Day. Supreme Court. January 17. 1866.

Ordered by the Court, That in all cases in which execution is ordered in causes adjudged and determined at the present Term the execution shall be directed to the Sheriff of the County in which the appeal or cause has been brought to this court.

Valentine S. Sheby, Appellant
vs
James L. Johnson and Geo. H. Wetmore, Appellees
} Appeal from Santa Fe County

And now comes the appellant by his Counsel and files his affidavit herein and prays an appeal to the Supreme Court of the United States, and a Supersedeas as to the judgement rendered in this cause, which appeal is granted by the Court, and a Supersedeas upon the appellant making bond to the appellees in the sum of twenty five hundred dollars in due and legal form, to be approved by the Court, with two or more good and sufficient securities.

And now said appellant comes into open Court with Felix Garcia and Charles L. Thayer his securities and enter into the bond required by this Court, which bond is approved by the Court, and ordered to be filed with the papers in this cause. Whereupon a Supersedeas is granted to operate against the execution of the judgement rendered herein until further action shall be had in pursuance of law.

16th Day. Supreme Court. January 18. 1866.

Ordered that this Court now adjourn until tomorrow morning at 10 o'clock

Kirby Benedict
J. Houghton

Thursday, January 18. 1866.

Court met pursuant to adjournment.
Present as on yesterday, except Justice Hubbell.

Ordered by the Court,
That Geo. Marshall be allowed the sum of fifty six dollars, for Stationery, Lights &c. furnished for the use of this Court at the present term, and twenty ~~four~~ dollars and ~~forty six~~ cents for wood furnished during the term, and thirty two dollars to José M. Sena for Court Room and furniture for sixteen days, furnished for the use of the Court.

Ordered by the Court,
That Juan Marques be allowed for sixteen days as Bailiff to this Court up to this day, during the present Term, at the rate of two dollars per day.

16th Day, Supreme Court, January 18th 1866.

Ordered that this Court now adjourn until the First Monday in February next, at 10 o'clock, A.M.

Hiby Bennett
J. Houghton

17th Day, Supreme Court, January 19th 1866.

Court met pursuant to adjournment.

Present,
Hon, Hiby Bennett, Chief Justice of the Supreme Court of said Territory
" Joel Houghton Associate Justice
Abraham Cutler, Esq, Act. Marshal of said Territory
José D. Sena, Esq, Sheriff of Santa Fe County
Samuel Ellison, Esq, Clerk of said Court,

The Marshal now returns into Court a Writ of Error issued in the case of Pedro Pino & Others Plaintiffs in Error vs Juan Bautista Valdez Defendant in Error which is sworn and duly served as such.

Whereupon Court adjourned until to-morrow morning at 10, o'clock A. M.

Hiby Bennett
J. Houghton

18th Day, Supreme Court, February 20th 1866,

Court met pursuant to adjournment,

Present as on yesterday -

Hon, S. A. Hubbell, not having arrived
It is ordered that Court adjourn until
to-morrow at 10. Oclock A. M,

Hiley Bennett
Prothonotary

19 Day, Supreme Court, February 21st 1866,

Court met pursuant to adjournment,

Present as on yesterday,

Hon. Sydney A. Hubbell Associate Justice
not having arrived,

It is ordered that Court adjourn until
to-morrow at 10. Oclock A. M,

Hiley Bennett,
Prothonotary

20th Day, Supreme Court, February 23d. 1866.

Present

Court met pursuant to adjournment.

Present as on yesterday as also,
Wm. L. Hinton Esqr. U.S. District Attorney.

Hon. Sidney A. Stubbs, Associate Justice
not sitting yet arrived

It is ordered that Court adjourn until
to-morrow at 10. Oclock A.M.

Hiley Bennett
Interpreter

21st Day, Supreme Court, February 24th 1866.

Court met pursuant to adjournment.

Present as on yesterday.

Hon. Sidney A. Stubbs, Associate Justice
sitting. Informs the Court that unfortunately
official business prevented him from coming
sitting, before the 26th inst.

It is ordered that Court adjourn until
to-morrow at 10. Oclock A.M.

Hiley Bennett
Interpreter

32. Day, Supreme Court, January 24th. 1866.

Court met pursuance to adjournment

Present as on yesterday -

James Thomas,
vs.
David W. McCormick } Appeal from 1st. Judicial District, Chora County.

And now the Court delivers its opinion in this case by Hon. Chief Justice Shuff, which is ordered to be filed and recorded in the opinion Book,

Jose Leandro Gutierrez
vs.
Maria Refugio Reid et al } Appeal from Second Judicial District Miguel Ramirez Dec'd Miguel County.

And now the Court delivers its opinion in this case, by Hon. Chief Justice Shuff which is ordered to be filed and recorded in the opinion Book,

Leonardo Siguenza,
vs.
Eugenio Elsberg and Lewis Stern } Motion for mandate and Recess.
Jacob Ansbacher }

And now the Court delivers its opinion in this case by Hon. Chief Justice Shuff which is ordered to be filed and recorded in the opinion Book,

The State of,
vs.
Gregorio Arcia } Appeal from First Judicial District Santa Ana County.
Jacob Collins }

And now the Court delivers its opinion in this case by Hon. Chief Justice Shuff

22nd Day. Supreme Court, Albany 24th 1866.

Justice Mullen is ordered to be filed and recorded in the opinion Book,

Jose Secondat,
vs.
Louis St Remy and Official from Justice
Stephen Ortiz. } District, Alma County.

And now the Court delivers its opinion in this case by Hon. Nich. Benedict, which is ordered to be filed and recorded in the opinion Book.

Aaron K. Greenlaw,
James Porter, Jas } Appeal from Justice
L. Burrows & Jos Lyons, } Official District of
vs. } Alma County.
Simeon Delgado Admr of }
the Estate of Simeon Pinto }
deceased.

And now the Court delivers its opinion in this case by Hon. Nich. Benedict Chief Justice which is ordered to be filed and recorded in the opinion Book.

William Peters
vs. } Appeal from Justice
Jose Manuel Cordova } Official District Alma County

And now the Court delivers its opinion in this case by Chief Justice Benedict which is ordered to be filed and recorded in the opinion Book,

It is ordered by the Court, that Jesus Maria Ortiz y Baca be allowed for six days attendance as this Court as Bailiff.

22 Day. Supreme Court, February 24th 1866,

It is ordered by the Court that José D. Sinn Sheriff of Santa Fé County be allowed for Twenty two days attendance on the Court as Sheriff

It is ordered by the Court that Abraham Cutler Ind. Marshal for this Territory be allowed for Twenty days attendance on this Court.

It is further ordered by the Court, that Theodore D. Wheaton, Esq. Ind. District Attorney for this Territory be allowed for twenty days attendance on this Court and also for two hundred and forty miles travel from his place of residence to the place of holding Court and returning -

Ordered by the Court,

That in all cases which have been determined, and no written opinion filed, the Judges may file their opinions with the Clerk respectively or otherwise at any time during vacation

Ordered,

That the Clerk make in the opinion Book true and perfect records of all opinions which have heretofore or shall hereafter be delivered and filed, and that he carefully make each record or cause to be made a clear, plain, and legible hand written copy of all Clerical, omissions, errors or mistakes, and that he charge his fees for the same to be duly collected.

22d Day. Supreme Court. February 24th 1866

Ordered further. That the Clerk make and records of opinions in due and prompt time after the same shall be filed with him.

Ordered. That all causes, motions or proceedings in this Court which have not been finally disposed of or determined by the Court be continued until the next Annual Term.

Ordered. That the Marshal be allowed three dollars for fuel furnished by him for the use of the Court, during the present month.

Ordered. That Samuel Ellison be allowed for twenty two days attendance on the Court at the present term, as Clerk thereof.

Ordered that Court adjourn until 10 o'clock A.M. tomorrow.

Hiram Berrien
Chief Justice
S. Worthington
Associate Justice

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In Vacation
Santa Fe April 28th 1866

City of Santa Fe N.M.
April 26th 1866

Hon Jno. P. Slough
Chief Justice of the Supreme Court,
Territory of New Mexico,

Sir, I hereby respectfully tender my resignation as Clerk of the Supreme Court of the Territory of New Mexico.

I am, Sir,
Very Respectfully
Your Obt Servt
(Signed) Saml Ellison,

Santa Fe, New Mexico,
April 27th 1866.

The foregoing resignation of Saml Ellison is accepted, and William M Grayson is hereby appointed Clerk of the Supreme Court of the Territory of New Mexico and, he will enter upon the discharge of the duties of such Office upon filing a bond in the sum of Two Thousand Dollars to be approved by the Chief Justice of the Territory, and conditioned to do and perform all the duties required by law, and taking the Oath of Office.

The Clerk of the Supreme Court will record the foregoing resignation, this appointment, and, the bond aforesaid in the records of the Supreme Court.

(Signed) Jno P Slough
Chief Justice S.C. New Mexico.

(Signed) J Houghton
Asst Justice S.C.
N.M.

One Dollar Rev Stamps

Know all men by these Presents:

That we, William M Gwynne as principle and Merle Ashcraft and Richard A Thompkins as sureties are jointly held and bound unto the Territory of New Mexico in the penal sum of Two Thousand Dollars. Sealed with our seals and dated this twenty seventh day of April A D 1866.

The Condition of the above obligation is such that whereas the said William M Gwynne has been appointed Clerk of the Supreme Court of the Territory of New Mexico:- Now if the said William M Gwynne shall do and perform all the duties of his said Office required by Law then this obligation to be void, otherwise to be and remain in full force and effect,

(Signed) William M Gwynne (Seal)
(Seal) M Ashcraft (Seal)
(Seal) R A Tompkins (Seal)

Bond and Sureties approved this the twenty seventh day of April A D 1866.

(Sgd) Jno P Slough
Chf Justice of the
Supreme Court
Territory of New Mexico

1867

First Day. Supreme Court January

At a Regular Term of the Supreme Court of the Territory of New Mexico, begun and held at the City of Santa Fe N.M. on the First Monday of January A.D. 1867

Present

Hon. Kirby Benedict Justice of the Supreme Court said Territory,

Hon. Henry A. Mabbett Associate Justice of said Court,

Hon. Joab Houghton Associate Justice of said Court,

John Pratt U.S. Marshal for said Territory,

Charles P. Clever Esq. Atty General for said Territory

William H. Sayre Clerk of Court

Jose D. Sena Sheriff of Santa Fe County

The U.S. Marshal produced in Open Court Jose D. Sena as Crier for the Court and Trinidad Brito as Bailiff, who were duly sworn as such.

No 6 Valentine Shelby } Appellant
vs.
Johnson Stewart } Appellee

By the consent of Counsel for the parties in this case the appeal to the Supreme Court of the United States is dismissed.

1st day. Monday January 7th 1867

Leave was granted by the Court, until Thursday 10th for the assignments of Error.

Court now adjourned to meet at 11 o'clock A.M. Tuesday 8th inst

Sydney Dubbell
Chf Justice

Sydney Dubbell
J. Hartley

#57

2nd Mon. Tuesday January 5th 1858

Maria Estefania Aguirre et al Appellants
vs Appeal from Socorro.
Rafael Luna Appellee.

Upon the suggestion of a diminution of the record in this cause, a Rule was Ordered to the Clerk of the Second Judicial District Court to forward to the Clerk of this Court, a transcript of the Records in said Cause, upon the payment of his Costs,

Upon motion of Theodore D. Wheaton Esq. the Hon Kirby Benedict was duly sworn and admitted as an Attorney of this Court.

Court now adjourned to meet at Rocks Mill, Wednesday January 6th

Jno. Copley
Jas. Collier
Thos. Mitchell
J. Houghton

At a Court, Wednesday January 7th 1846
Court met pursuant to adjournment
Present

Hon Elias Dwight Chief Justice
Hon Sydney A Hubbell Associate Justice
Hon Roger Nelson Associate Justice
Jose Vesia Esq Sheriff Sandoval Co
Wm Lyman Clerk of Court
Chas Petit Esq Dist Attorney 1st Judicial Dist
Deputy Jose Vesia

Proclamation of Adjourning had and opened by the Court,

Ten Days in Session before the Court it was adjourned to meet at 10 o'clock AM Tuesday January 20th 1846.

(Sd) E. Dwight

Wm Lyman Clerk

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4th Day. Tuesday January 10th 1865

Court met pursuant to adjournment

Present

Hon Kirby Benedict Chief Justice
Hon Joab Houghton Associate Justice

Theodore D Wheaton Esq U.S. Dist Atty
John Pratt Esq U.S. Marshall
Jose D Sena Esq Interpr Santa Fe Co
William M Tipton Clerk of Court

Proceedings of Wednesday Read and approved

No 9. Casimiro Archuleta } Appeal from Rio Arriba Co
vs. Francisco Montaño } This cause is continued until the next term of this Court, by agreement.

No 1 Juan Vigil et al }
vs. } Appeal from
The United States } Court. Theodore D Wheaton Esq United States District Attorney and appointed by Court to defend Juan Vigil. with whom his heirs Petrona Maria Vigil, Juan Vigil and Juan Vigil — were associated as parties on their demands to this suit

At a Court Held at Newark on Friday the 9th day of January 1807

It was ordered that this Court do adjourn to the Court House in Newark on Saturday next at 10 o'clock AM

Present

The Honble Sydney Smith Esqr Chief Justice

Peter Russell Esqr

The Honble Henry Allcock Esqr

Members of the Court

The Proceedings of Yesterday were read and confirmed

Sydney Smith

Peter Russell

Henry Allcock

Saturday 10th January 1807

Court met pursuant to adjournment

Present

The Honble Sydney Smith Esqr Chief Justice

Peter Russell Esqr

Henry Allcock Esqr

Members of the Court

The Proceedings of Yesterday were read and confirmed

Sydney Smith

Peter Russell

Henry Allcock

Friday, January 7th

Leave granted to withdraw Appearance

Entered

Tuesday, February 1st

Order to Show Cause

Entered

Proceedings stayed pending Appeal

No 32 Thomas Gallagher } Appeal from Probate Court
vs } Delaware County
Thomas Sweetser } Appeal Dismissed

Thomas for Appellant in this case moved the Court for rule upon the Clerk of this Court to show cause why the Appeal in this case should not be dismissed

The Court being fully advised in the premises, it is Ordered that a Rule be issued by the Clerk of this Court directed to the Clerk of this Court to show cause on the 1st Monday of March next, upon the payment of his costs

No 33 [illegible]

[illegible] Saturday [illegible]
[illegible] [illegible] [illegible]
[illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
Court of the Court
[illegible] [illegible] [illegible]
[illegible]

No 27 Andrew Kidd } Appeal from the Magistrates
vs. } Court case.
Wm. Smith }

This cause coming on to be heard upon the Transcript of the Record and Proceedings herein and upon the arguments of Counsel thereupon had, and the Court not being advised what judgment to render, takes time to consider the same.

No 29 Maria Karata Garcia }
vs. } Appeal from the
Agnes Comstock } District Court
Agnes E. Comstock }
Anastacio Garcia }

This cause coming on to be heard upon the Transcript of the Record and Proceedings and upon the arguments of Counsel, and the Court being fully advised in the premises, finds that the Court below erred in rendering judgment in favor of the plaintiffs and against the defendants, and that the Court below should have rendered judgment in favor of the defendants and against the plaintiffs, and that the defendants should recover of the plaintiffs their costs herein expended, and that the plaintiffs should recover of the defendants their costs herein expended in the Court below, and that the defendants should recover of the plaintiffs their costs herein expended in this Court, and that the plaintiffs should recover of the defendants their costs herein expended in this Court, and that the plaintiffs should recover of the defendants their costs herein expended in this Court, and that the plaintiffs should recover of the defendants

Sydney & Murchett
Sydney Australia

Friday, January 5th
Court not organized to meet at
11 o'clock A.M. Wednesday 10th inst.

Saturday, January 6th
Court not organized to adjournment.
Court was Yesterday
Proceedings & Sunday viz and after.

Long Session, 1st Week
Nature of Business, This day came into
Court and proved to the Satisfaction of the
Court, that he was in the Civil Employ
Military Service, during the late War with
Great Britain & his Residence to be within
Limits of the United States, that he has
resided in the United States for four years
last past, that he has resided one year
last past in the Territory of Iowa, that
and that during all that time he has been
as a citizen of good moral character
attached to the Principles of the Constitution
of the United States, and well disposed to
the good Order and Happiness of the same.
Ordered thereupon that said
Petition be granted, and that a Certificate
Issue, that he will Report-

9th Day, Testimony Dismissed

the Constitution of the United States, and that he doth abjure and renounce and abjure all allegiance and fidelity to any foreign Prince, Potentate State or Sovereignty and particularly all allegiance and fidelity to Frederick William, King of Prussia, whose subject he was.

Thereupon it is Ordered by the Court that a Certificate of Naturalization be issued to the said Louis Schwenk upon the payment of the Cost of this Application.

No 19 United States
vs
Louis Schwenk

Appeal from 3rd Ward Dist

This cause coming on to be argued, and the Argument not having been completed at the Term of adjournment, and disposition not made Final now,

Cause ordered to stand at the head of the Docket for argument.

Geo. W. Lay
Symmes Mitchell
J. H. Longstreet

[illegible] Court

[illegible] Term, [illegible]

Court met pursuant to adjournment

Present as [illegible]

[illegible] of [illegible]

[illegible] of [illegible] met and a [illegible]

April Justices [illegible]

[illegible] parties doing business as Eldredge-Hughes

[illegible] Appeal from Civil Justice Court

[illegible]

Administration of the Estate

Augustus Adams

[illegible] Order appointing Administrator

[illegible] Appeal from the Surrogate's Court of the County of Albany, which is ordered to be filed and recorded in the Albany County Clerk's office.

[illegible] Order ordered and adjudged by the Court, that the proceedings of the Surrogate's Court of the County of Albany, at the term of [illegible]

[illegible] Motion [illegible]

[illegible] Motion [illegible]

[illegible] Motion [illegible]

[illegible] Motion [illegible]

Appeal from Albany County Surrogate's Court

No 19

No 20 United States

No 21

[illegible] James C. Parker

[illegible] this cause came on to be heard upon the motion of the U.S. Attorney Thomas Proctor & Prosecutor Esq. to dismiss the Libel, herein under which action was ordered by the Court [illegible] Prosecutor, for the said Libelant Libel-filed [illegible] Prosecutor. has now submitted to the Court a written agreement.

No 56

[illegible] Maria [illegible]
[illegible] Maria [illegible]
[illegible] this cause coming on to be heard upon the [illegible]

[illegible] Augustin [illegible], one of the [illegible] Court of France, in the district [illegible] the Southern District of this State, that he [illegible] duly [illegible] States on the [illegible] [illegible] and that at the [illegible] the United States, and is desirous [illegible] all [illegible] and [illegible] to [illegible] France, [illegible] State or Province [illegible] and [illegible] to the Consul [illegible] France [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

12th Day. Saturday January 19th 1867

Court met pursuant to adjournment.

Present as on Yesterday.

Proceedings of Friday read and approved.

No 19 Property levied upon by the U.S. Marshal and claimed as the property of Louis Dutton. Situate in El Paso County Texas. } Appeal from 5th Judicial Dist. Hon. Geo. Paschal Judge. Houston Presiding Dist. Hon. Oscar Addington Counsel for Appellant. } The United States } Appellee

Delivered its Opinion in this Cause by the Hon. Geo. P. Upshur Chief Justice, Associate Justice Houghton dissenting, and the Opinion was ordered to be

467

12th Day, Saturday January 9th 96,
filed and copied in the Opinion Book,
It is Ordered, adjudged
and Decreed that the proceedings and judgement
of the Court below be and the same are
hereby reversed and annulled, and the
Cause be remanded to the District Court
for the County of Doña Ana to be by the
said Court dismissed for the want of
jurisdiction in the said Court over the
property in the County of El Paso, Texas
libelled in this cause, at the costs of
the United States.

No 20 Property seized upon by the U.S Marshal, and libelled as the property of Samuel Maverick and William Ford, situate in El Paso Co Texas

Appeal from 3rd Judicial Dist

The United States vs Appellant

No 21

The Court now delivered its Opinion in this Cause, by Hon Thos. J Storey Chief Justice, Associate Justice Collier, and the Opinion was ordered to be filed and copied in the Opinion book.

It is Ordered, adjudged and Decreed that the proceedings and judgement of the Court below be and the same are hereby reversed and annulled, and the Cause be remanded to the District Court for the County of Doña Ana to be by the said Court dismissed for the want of jurisdiction in the said Court over the property in the County of El Paso, Texas libelled in this Cause, at the Costs of the United States.

12th Day, Saturday January 19th 1907

No 11 Property seized upon by the U.S. Marshal and libeled as the property of Frederick Pierpont, situate in El Paso Co, Texas

A.D.

The United States

Appellant

Appellee

The Court now delivered its Opinion in this cause by Mr Justice Brewer Chief Justice, Mr Justice Moody not sitting, and the Opinion was ordered to be filed and recorded in the Opinion book,

It is Ordered, Adjudged, and decreed by this Court that the Judgment and judgment of the Court below, be and the same are hereby reversed and annulled and this cause remanded to the District Court for the County of Dona Ana, to be by the said Court dismissed for the want of jurisdiction in the said Court over the property in the County of El Paso, Texas libeled in this cause, at the Costs of the United States,

No 12 Property seized upon by the U.S. Marshal, and libeled as property of James Magoffin, situate in El Paso County, Texas,

A.D.

The United States

Appellant

Appellee

The Court now delivered its Opinion in this cause, by Mr Justice Brewer Chief Justice, Mr Justice Moody not sitting dissenting, and the Opinion was ordered to be filed and recorded in the Opinion book,

12th Day, Friday January 19th 1866

It is Ordered, Adjudged and decreed by the Court that the proceedings and judgement of the Court below, be and the same are hereby reversed and annulled and this cause be remanded to the District Court for the County of Dona Ana, to be by the same discovered for want of jurisdiction over the property in the County of El Paso, Texas, Libeled in this Cause, at the Costs of the United States,

No 23 Property seized by the U.S. Marshal, and Libeled as property of Louis Hubbell, situate in the County of El Paso, Texas

The United States

} Appeal from Dona Ana 3rd Judicial Dist

} Appellant

The Court now delivered its Opinion in this Cause by Mr Chief Justice Hemphill, Associate Justice Hemphill dissenting, and the Opinion was ordered to be filed and recorded in the Journal of Court

It is Ordered Adjudged and decreed by the Court, that the proceedings and judgement of the Court below, be and the same are hereby reversed and annulled, and this cause be remanded to the District Court for the County of Dona Ana to be by the same discovered for want of jurisdiction over the property in the County of El Paso Texas, Libeled in this cause, at the Costs of the United States,

12th Day, Friday January 19th 1917

No 24 Property seized upon by the U.S. Marshal, and libelled as the property of Josiah S Craig situate in the County of El Paso, Texas, } Appeal from Dona Ana 3rd Judicial Dist
} Appellant
The United States } Appellee,

The Court now delivered its Opinion in this Cause by Hon Geo P Hardy, Chief Justice, heretofore Presiding, and the Opinion was ordered to be filed and Recorded in the Opinion Book,

It is Ordered, adjudged and decreed by the Court that the proceedings and judgment of the Court below be and the same are hereby reversed, and annulled and this Cause be remanded to the District Court for the County of Dona Ana to be by the same dismissed for want of jurisdiction over the property libelled in this Cause, at the Costs of the United States,

No 25 Property seized upon by the U.S. Marshal, and libelled as the property of James G Parker, situate in the County of El Paso Texas } Appeal from Dona Ana County, 3rd Judicial Dist
} Appellant
The United States } Appellee,

The Court now delivered its Opinion in this Cause by the Hon Geo P Hardy, Chief Justice, heretofore Presiding, and the Opinion

#77

Dona Ana, Friday January 19th 1867

The following cause coming on to be heard, it is Ordered Adjudged and Decreed by the Court that the proceedings and judgement of the Court below, be and the same are hereby annulled and reversed, and this cause be remanded to the District Court for the County of Dona Ana to be by the same dismissed for the want of jurisdiction over the property in El Paso County Texas, libeled in this cause, at the Costs of the United States,

No 28 Frank Steiger } Appeal from Mesa County,
vs } Judge Buck, Chief Justice
John H Wadell } Hughes presiding,

This cause came on to be heard upon the Motion of S. P. Coleman Esq Counsel for the Appellee, to dismiss the Appeal herein, which Motion was argued by Counsel and overruled by the Court,

The Hon Kirby Benedict Counsel for Appellant then moved the Court to dismiss the Original suit in which this appeal is taken, which Motion was also argued by Counsel and overruled,

Court now adjourned to meet at 10 o'clock AM Monday 21st Inst,

Geo. W. Julian C.

Sydney A Wadell

J. H. Stephenson

18th Day, Monday January 21st 1867

Court met pursuant to adjournment.
Present as on Saturday
Proceedings of Saturday read and
approved.

No 28 Frank Metzger } Appeal from Mora County
vs } First Judicial District
John D Waddell } Chief Justice Slough presiding

Now on this day this cause
came on again to be argued by Counsel,
which argument had not been completed
at the hour of adjournment and final
disposition of the case was not made.

Court now adjourned to meet at 10
o'clock AM. Tuesday 22nd inst.

Wm. A. Pile, Clerk
By Ignacio Montoya
J. Hayes

4th Day, Tuesday January 22nd 1907.

Court met pursuant to adjournment.

Present as on Yesterday.

Proceedings of Monday read & affirmed

28 Frank Metzger } Appeal from Mora Co
vs } Sup Ct Writ
John H Radcliff } Chf Justice Leigh presiding

This cause now came on again to be argued by Counsel, and upon the completion of the argument was submitted to the Court.

No 30 Anson Comstock Sons } Attachment in Assumpsit
vs
Anastacio Varela }

This cause came on to be heard upon motion of Fred D Wheaton Esq Counsel for Appellant for a writ of Error, which motion was granted. Thereupon Counsel for Appellee waived costs and acknowledged service.

Court now adjourned until 10 o'clk AM Wednesday January 23rd.

Leo. H. Hewett
Sydney A Mitchell
J. H. Crawford

1874

16th Day of Tuesday January 23rd 67

Court met pursuant to adjournment

Present as on Yesterday

Proceedings of Tuesday Read and approved

No 19 Property siezed upon and by the US Marshal
libelled as the property of
Louis Dutton Citizen
in El Paso County Texas

Appeal from Dona Ana County

Appellant

vs

The United States

Appellee

And now comes the United States by her District Attorney and moves the Court for an appeal in this cause, which Motion is here sustained by the Court and an Appeal allowed to the Supreme Court of the United States,

No 20 Property siezed upon and by the US Marshal
libeled as the property of
Samuel Maverick Citizen
in El Paso County, Texas

Appeal from Dona Ana County

Appellant

vs

The United States

Appellee

And now comes the United States by her District Attorney and moves the Court for an appeal in this cause, which Motion is here sustained by the Court and an Appeal allowed to the Supreme Court of the United States

15th Day, Wednesday January 23rd 67

No 21 Property seized upon by the U.S. Marshal and libeled as the property of Frederick Pleyant situate in El Paso County Texas

vs

The United States

} Appeal from Doña Ana County. Appellant

And now come the United States by her District Attorney and moves the Court for an appeal in this cause, which motion is here sustained and an Appeal allowed to the Supreme Court of the United States,

No 22 Property seized upon by the U.S Marshall and libeled as the property of Jame Hag Office situate in El Paso County, Texas

vs

The United States

} Appeal from Doña Ana County Appellant

Now comes the United States by her District Attorney and moves the Court for an appeal in this cause, which motion is here sustained by the Court, and an appeal allowed to the Supreme Court of the United States,

No 23 Property seized upon by the U.S. Marshal and libeled as the Property of Jams Hubbell situate in El Paso County, Texas,

vs

The United States

} Appeal from Doña Ana County Appellant

And now comes the United States by her District Attorney and moves the Court for an Appeal

5th Day, Tuesday January 23rd 1917

in this cause, which motion is sustained by the Court, and an Appeal allowed to the Supreme Court of the United States,

No 24 Property seized upon by the United States Marshal and libeled as the Property of Josiah S Crosby &c, situate in El Paso County, Texas
vs
The United States

Appeal from Doña Ana County

Appellant

And now comes the United States by her District Attorney, and moves the Court for an Appeal in this Cause, which motion was sustained by the Court, and an Appeal allowed to the Supreme Court of the United States,

No 25 Property seized upon by the U.S. Marshal and libelled as the property of James L Mauser, situate in El Paso County, Texas
vs
The United State

Appeal from Doña Ana County

Appellant

And now comn the United States by her District Attorney, and moves the Court for an Appeal in this Cause, which Motion is sustained by the Court, and an Appeal allowed to the Supreme Court of the United States,

No 35 Jose Montoya
vs
Rafael Mena

Appeal from Santa Ana County,

This cause now came on to be argued by Counsel, and upon

15th day, Thursday Jany 28/76

the completion of the argument was submitted to the Court.

Ordered! That all arguments of cases in this Court, shall be presented to the Court in writing, when the same shall not exceed eight pages of legal Cap Paper, to be written in a plain clear hand, and when the argument shall exceed eight pages as aforesaid, then the same shall be printed, and the Attorney presenting the argument shall read the same to the Court when the Court shall so direct, provided further; that the argument shall contain full reference to all the authorities relied upon in support of the legal questions ~~raised~~ raised and upon which the Court is asked to render its judgement, and that a copy of the written or printed argument shall be furnished by the Attorney of the Appellant to the Attorney of the Appellee at least eight days before the first day of the term of the Supreme Court, by which the same is to be heard. This Rule shall not be in force until the next term of this Court.

Court now adjourned to meet at 10 o'clk AM Thursday Jany 29th 1876

Sydney A Mitchell
Chief Justice

[illegible] Monday January [illegible]

[illegible] Circuit Court

[illegible] That the [illegible]
Act [illegible] in the United States
Courts & the District Courts of the
Territory, shall be

"In all letters Contesting the ——
"Judicial District, Territory of New Mexico "
"sitting for the trial of causes arising "
"under the Constitution and Laws of the "
"United States."

That the style of all writs
writs in the Territorial Courts of the
District Courts of this Territory shall be
"In the name of the ——
"Judicial District, sitting in the County "
"of ——, Territory of New Mexico, for the "
"trial of causes arising under the Laws "
"of the Territory."

[illegible] and all the terms of
to which [illegible] Process

Approved Jan 2nd
Wyman A. Mitchell
Delegate

No. 1

The United States of America, Plaintiff,

vs.

Manuel Perea et al., Defendants.

Petition for Injunction.

Filed ... day of ... A.D. 1891.

To the Honorable the Judges of the District Court of the United States for the First Judicial District of New Mexico, sitting in Equity:

Your petitioner, the United States of America, by Thomas B. Catron, Attorney of the United States for the District of New Mexico, thereunto duly authorized, brings this its bill of complaint against Manuel Perea, Pablo Perea, Juan Perea, Jesus Perea, Francisco Perea, Jose

Friday January 25th

At the request of the agents of Stevens in the suit, Attn Cross of the Defendants,

No 33 Hoff v Hoff } Writ of Error from Sessions
Court of Chancery } No 22

The Counsel in this cause by Mr Vroom Senator Southard, — Miller Fowler Master Accounting — Wm Wms Ordered to be filed and recorded in the Minute book.

The Court that the proceedings and judgment in the said cause be affirmed; and that the Defendant in Error recover against the Plaintiff in Error his costs, and judgment accordingly.

No 34 Mattis v Wetherill } Writ from Sessions
Att & Counsellor }

The Counsel in this cause by Mr Vroom Southard, Mr Spencer, Miller, — Mr Wms Fowler Young, Williams, — Wms Wms ordered to be filed and recorded in the Minute book.

The Court that the proceedings and judgment in the said cause be affirmed; and that the Defendant

1st Day. Friday January 25th 1867

No Frank Metzger } Appeal from Pima County
vs
John Sr Waddell }

The Court now delivered its opinion in this cause by Hon John Titus Chief Justice, which was ordered to be filed and recorded in the Opinion Book.

It is Ordered and Decreed that the proceedings and judgment of the Court below be affirmed and confirmed with costs, and that the cause be remanded for the further action of said Court, thereupon Hon Kirby Benedict Counsel for the Appellant rested for an Appeal.

Court now adjourns to meet at 10 o'clock on Saturday morning 26th inst.

Sam Hemphill
Sydney A Whitehill
J Houghton

15th Day, Saturday January 26th 1856

Court met pursuant to adjournment
Present as on Yesterday
Proceedings of Friday read and approved

Ordered; That all applications for writs of Error shall be made to the Supreme Court, or to one of the Judges thereof in the manner now prescribed by Acts of Congress, regulating writs of error from the 2nd District to the U. States Circuit Court of the United States,

No 32 Ramon Vallejo } Appeal from Valencia
vs. } County
Mariano Guadal }

This Cause was delivered in opinion in this case by Hon Sydney Sloan Justice, Hemphill dissenting, when Opinion was ordered to be filed and recorded in the Opinion book. Ordered and Decreed by the Court, that the judgement of the District Court in this Cause be reversed and annulled and that this Cause be remanded to the District Court with instructions to proceed in accordance to law,

No 36 Thomas Shields } Appeal from
vs. } Napa County
Pablo Yount }

Opinion in this Cause, by Hon

#85

Petition for Injunction granted in Civil Action, which was ordered to be filed and recorded in the Minute Book,

It is Ordered and decreed by the Court that the proceedings and Judgment of the Court below be reversed, and that Thomas Heredia be discharged from the custody of Jose Maria Garcia and go free without Costs,

Ordered:

That the Clerk of this Court forward to the Clerk of the 1st and 2nd Said Judicial Districts Courts, a certified Copy of the Rule made on the 16th day of this term, Regulating the Style of the writs issued by the U.S. Branch of the District Courts and of the Territorial Branch of the same,

#86

Ordered:

That the Clerk of this Court forward to each of the Editors of the Daily newspapers published in the City of Santa Fe, a Copy of the decree in the Matter of Thomas Heredia vs Jose Maria Garcia,

#87. Frank Metzger
vs
Jesus M. Madrid

Writ of Error from the District Court

This cause came on to be heard upon the Motion of Hon Ruby Woodruff Counsel for Defendant in Error to dismiss the Supreme Court of the United States, which Motion was heard upon argument filed and granted

1st Day, Saturday January 8th 1876

The Court.

Jno Reid Esqr Counsel for Applicant now moved the Court for a Superscedeas and Stay of execution in this cause which was ordered to be granted upon the Appellants filing a Bond in the sum of Ten thousand Dollars, to be approved by the Judge of the 4th Judicial District Court, on or before the first day of the next term of the District Court for the County of Elko,

The following named persons were duly appointed by the Court Elected States Commissioners under the laws of Congress, and it was ordered that the Clerk of this Court notify each, officially of his appointment as such Commissioner; to wit

William M Bayne — Santa Fe County
Frank C Stebbins — San Miguel "
William L Hartwood — Taos County
Peter D Barrett — Dona Ana "
Nepomuceno Abreu — Bernalillo "

Court now adjourned to meet at 10 o'clock AM. Monday Jany 24th 76.

Wm M Bayne
Frank C Stebbins

1st Day. Monday, June 28th 1886.

Court met pursuant Adjournment

Present as on Saturday.

Proceedings of Saturday read & confirmed

It was now Ordered that the following named Officers of the Court be allowed the sum each opposite their respective names for services rendered during the present Term of the Court, viz;

William M Lyons	Clerk	19 days @ 5.00	95.00
Jose Pratt Esq	U.S. Marshal	22 " " 5.00	110.00
Jose D Sena "	Crier	19 " " 2.00	38.00
Trinidad Vito	Bailiff	19 " " 2.00	38.00
Jose M Silva Esq	Interpreter, Santa Fe	19 " " 4.00	76.00

Ordered that the following bills of the U.S. Marshal be allowed, viz;

Geo. Titus, Witness		4.00
Hugo Effenche "		10.00
Rent of Room	22 days @ 3.00	66.00
Wood		10.00

Ordered that Thos. Smith & Thos. Catron Esq. U.S. District Attorney be allowed for attendance upon the Court

21 Days @ 5.00 105.00

For mileage going & coming to and from Red Stand, the nearest 240 Miles @ 10¢ 24.00

City Attorney January 27th 1875

Ordered that all causes noticed
& not otherwise disposed of this
term of the Court, stand continued
until the next term of the same,

Ordered that Silas Pratt Co. Sr
Surveyor be allowed mileage
75 miles @ 1/2c $ 1.50

Court was adjourned until the next
regular Court day in course,

Thos. J. Lacy C.
Sydney Mitchell
J. P. Dodge Co Sr